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CONTENTS FOR JANUARY

DEPARTMENTS

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THE LEAGUE'S BUSINESS

1932 Convention in Washington, D. C.—Invitations for the 1932 convention have been submitted by Atlantic City, Indianapolis, Rochester, Baltimore and Washington, D. C. The Executive Committee, at its meeting on the evening of December 4, voted to accept the invitation from Washington as extended by Miss Harlean James, secretary of the American Civic Association. The convention will therefore be held in Washington probably during the last week in September, the exact time and place to be decided later in consultation with the various sponsoring groups.

Meeting at the same time and place will be the American Civic Association, the American Society of Landscape Architects, the American Institute of Park Executives and probably also the National Conference on City Planning. The Governmental Research Association will probably meet in 1932 with the International City Managers' Association. But the other groups hitherto combining forces in the National Conference on Government will meet at Washington next year. In addition, then, to the new groups listed above, the conference will be the annual meeting of the National Municipal League, American Legislators' Association, the National Association of Civic Secretaries and the Proportional Representation League.

It is planned to have a separate program for the National Municipal League, and to hold a few joint sessions with the other organizations. Louis Brownlow, first vice-president of the League and director of the Public Administration Clearing House, has consented to serve as chairman of our program committee which insures a program of unusual merit. Further details will be announced on this page in a later issue.

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Progress on New Edition of Model City Charter.—The Committee on New Municipal Program held a meeting in Buffalo on November 8 and considered the manuscript for a proposed new edition of the *Model City Charter*. At that meeting it was decided that the task could not satisfactorily be completed without a long and intensive meeting of several days' duration, in a place free from convention distractions. Richard S. Childs, chairman of the committee, has called a meeting at the Princeton Inn, Princeton, N. J., for January 15, 16 and 17. The International City Managers' Association has appointed five of its leading members to meet with our committee to insure that the new edition of the *Model City Charter* is in line with the best modern practice of city management.

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Committee on Model Special Assessment Law.—At the present time there is considerable need for legislative recommendations on the subject of special assessments. The Investment Bankers' Association of America has recently prepared a report on the subject and has suggested that the National Municipal League use the report as a basis in formulating a recommended model state law for application to local government. The Chamber of Commerce of the United States has likewise in preparation a committee report on the subject of special assessments which the Chamber is willing to make available for use by the National Municipal League. The Executive Committee has authorized Murray Seasongood, president, to appoint a committee for the purpose. Carl H. Pforzheimer, treasurer, has agreed to serve as chairman and C. E. Rightor, of the Detroit Bureau of Governmental Research, will be the committee secretary. The complete personnel will be announced later.

RUSSELL FORBES, *Secretary.*

Editorial Comment

January

NATIONAL MUNICIPAL REVIEW

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Cleveland Returns to Mayor and Council Government

The Cleveland city manager-proportional representation charter was repealed on November 3 by a vote of 61,448 to 51,831. The total registration of voters in the city numbered 248,788. Less than half of these eligibles cast a ballot on the charter question; and less than one-fourth brought about the overthrow of the manager system. The proposal for repeal was backed by the Democratic party in Cleveland, and the last election was a field day for Democrats everywhere.

The adoption of manager government in 1921 (effective in 1924) by a city the size of Cleveland was a feather in the cap of the friends of the manager system. That its abandonment after eight years' experience was a blow to the plan's prestige throughout the United States must be admitted.

Was the blow deserved? Does the 9,000 majority in favor of a return to the mayor-council form signify that the manager plan failed? Some are saying that it does.

Cleveland voters, or a part of them, decided in a perfectly legal manner that they did not want manager government to continue. But what civic leaders in other cities will want to know is what were the facts and motives behind the adverse verdict. What percentage of the voters who helped to record this verdict were out of sympathy with the ideals of manager government, preferring rather the free and easy politics of earlier years? To what extent were the people misled by surface incidents or depression psychology which prevented an independent judgment on the record of manager government? What does the cold evidence show as to this record? Emotion aside, was the new system an improvement or not?

These are some of the questions which manager advocates and their honest opponents alike should put to themselves. Not often can Americans study the operation of local government in as good an experimental laboratory as Cleveland has been for the past eight years; and we should not fail to take advantage of the opportunity.

A careful survey of Cleveland's record during this period establishes several significant facts.

First, manager government, introduced under conditions far short of ideal, did give better results than the old mayor form. Moreover, its effectiveness seems to have been increasing each year. Two careful reports by the Citizens' League covering the first seven years fully substantiate this

viewpoint. The city tax rate fell while school and county tax rates rose. The city's increase in tax receipts, due largely to increase in valuation, was only 2.8 per cent between 1924 and 1930, while that of the other taxing units combined was 19.9 per cent. Unit street paving costs were reduced from $6.24 to $4.67. Waste disposal costs were decreased. City hospital costs were lowered without effect upon quality of service. The police and fire divisions were brought to a high degree of efficiency. The approval in 1930 of a five-year improvement program by the voters of the city can be interpreted only as a vote of confidence in the municipal government. In his final report to the council, Manager D. E. Morgan declared:

> I do not hesitate to say that never in the same period of time in this city has anything like the amount of progress been made as has been made within the life of the authority of this city council.

Removed from its context this claim might seem extravagant, but considered in the light of the supporting data in the manager's farewell address, it appears not only possible but probable.

Second, while more responsive and efficient, the new form had not yet freed itself entirely from the encumbrances of old-fashioned politics. The council was, with outstanding exceptions, politically subservient (the majority of the first council did not want to see the charter succeed); and the administration was not non-political. Of this close students were fully aware but confidently believed that the system was cleansing itself of old, inherited infections. The Citizens' League, while uniformly critical of councilmanic weaknesses, observed steady improvement in council's personnel and accomplishments. At no time, it states, was the manager plan given a fair trial.

Third, November found the voters in a resentful mood, disposed to vote against any existing order. The business depression enabled a political organization to accomplish something which had been attempted unsuccessfully on three previous occasions.

Fourth, the manager-proportional representation charter throughout its whole life lacked the support of an active charter organization such as has distinguished Cincinnati politics in recent years. True, the Citizens' League pointed out glaring defects in the amendment to restore the mayor-council form, and urged the retention of the manager system. The Women's City Club was intelligently helpful, the League of Women Voters was active as in past defense campaigns, and the Citizens' Committee of 1929 was reorganized to some extent although it did not function on the scale of two years ago. But no independent group appeared at any time to threaten the machine control of the political side of the city government.

Fifth, a serious mistake was made in the 1921 charter in the provision for the election of councilmen by districts. The council of twenty-five was excessively large; proportional representation brought out many candidates and the total number on the ballot in the four districts was beyond the voters' understanding. While council elections were bitter they were always district rather than city fights. It is clear that election at large, as in Cincinnati, would have improved the calibre of council, rendered easier the creation of a city-wide independent movement, and facilitated the divorce of politics and administration.

But any party publicity man knows that popular elections frequently do not turn on fundamental issues, and this time Cleveland was no exception. Two weeks before election, former Manager Hopkins in a talk to the City

Club launched a bitter attack upon Maurice Maschke, the Republican leader. Mr. Maschke, breaking a life-long practice to refrain from platform debates, replied before the same club a week later. Hopkins took the lid off municipal politics and deposited the refuse at Maschke's door. The latter reciprocated by involving Hopkins in the very deals which he had condemned. As has happened before in Cleveland, many voters, disgusted with political mud-slinging, decided to vote out the system whose operation was being debated in extraordinarily abusive language. Neither Maschke nor Hopkins was seeking the defeat of the manager plan, but their personal quarrel operated to that end.

The picture of sordid politics painted by opponents of the manager plan from the materials of the Hopkins-Maschke controversy was embellished during the last week of the campaign by a carefully timed attack by the county prosecutor upon the police department. The prosecutor, who was a Democrat campaigning on behalf of his party against the manager plan, permitted the release of grand jury testimony the Friday before election. Of course, no opportunity for rebutting evidence was afforded, and the denials of the director of public safety and the chief of police could not overcome the presumption established by the improper leaks from the grand jury room.

The city manager plan was defeated despite the fact that it had the vigorous support of all the newspapers, the Republican organization, various civic bodies whose leadership can usually be trusted, such as the Women's City Club, the Citizens' League, the Chamber of Commerce and the Citizens' Committee, and despite the fact that the then city manager, D. E. Morgan, had observed the letter and spirit of the manager charter with a high degree of conscientiousness.

As a matter of fact, election interest centered chiefly upon the councilmanic race. Thirty-one per cent of those who cast ballots for council candidates failed to record a preference on the charter issue. Less than 50 per cent of the registered voters participated in the manager issue.

In our opinion, the majority of Cleveland voters who expressed a legal opinion at the polls disregarded the record of manager government and voted under the influence of machine dictation, depression psychology or a natural distaste for seeing dirty political linen washed in public. We predict that Cleveland will one day return to the manager plan and that its operation will then fulfill reform expectation by reason of a better understanding of its true nature.

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What About the Indiana Tax Plan?

Hard times are bringing renewed consideration of the possibilities of state control of municipal taxation and expenditures. The so-called Indiana plan, which has been given wide national publicity, is being put forward as a panacea for our civic ills. Some of the claims made for it are extravagant but it has now operated for a decade and its results cannot be dismissed lightly by its foes. *New Jersey Municipalities* is to be congratulated upon undertaking a series of articles on the subject from the pen of Wylie Kilpatrick who has been an intensive student of the Indiana plan for a number of years.

In brief the plan authorizes the state tax board to review, upon appeal of ten taxpayers in any district, a proposed budget or bond issue of the district. After hearing the appeal the board may approve, reject or reduce budgetary items or bond measures. Thus a share

of the responsibility for the volume of expenditures is transferred from the locality to a state board.

Everyone seems to agree that certain reductions in taxation have been effected. In one year they amounted to more than $4,500,000, on paper at least. Budget increases and bond issues have frequently been disapproved or reduced for sound reasons. Mr. Kilpatrick believes, however, that in some respects the supervision has been unwise, and that in others it has failed to reach the real causes of improvident financial administration.

The prevailing opinion in Indiana seems to be that the aggregate amount of tax levy throughout the state for 1932 will be less than for 1931 by almost $7,000,000 in a total property tax of more than $165,000,000. But a considerable portion of these reductions are predicated upon orders to absorb working balances. It is also probably true that local units frequently inflate their original budgets in anticipation of reduction by the state board. Consequently it is a moot question whether the state board helps or hinders the local officials and their public to reduce expenditures. Moreover, it is possible that local officials anticipating appeals to the state board fail to do the thorough budget job which they otherwise might perform.

It is possible that some of the major reductions ordered are unwise. The wisdom of a state board is not invariably perfect. For instance, the current budget of Marion County (Indianapolis) must be reduced 5 cents in the sinking fund rate, the state board having directed that $380,000 of next year's bond maturities, which the 5-cent rate was to meet, be refunded. This is a financial policy extremely dangerous, if not radically unsound. There is danger, moreover, that what has been done may turn out to be a mere postponement of taxes or a using up of working balances. Advertised savings of the past have in part come from these very sources.

There is, of course, another side to the picture. Fear of censure by the state tax board may lead governing bodies to greater zeal for economy and thus save the people from unnecessary tax burdens without the appearance of such savings in the record.

State review contains no magic to lift municipal governments out of their difficulties. Unquestionably the effective cure lies deeper than a mere veto of bond and budget items after passage by the local bodies. For example, the New Jersey municipal bond and budget acts are more effective in reaching certain evils which the Indiana plan is designed to stop than a mere veto power would be.

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In the Notes and Events department Howell Wright interprets the Cleveland vote against the proposed bond issue of $2,500,000 for the expansion of the municipal light plant. While not agreeing with Mr. Wright in all respects, we are glad to publish his views as to why the voters acted as they did.

To laymen the answer to the question of whether the Cleveland municipal plant has been successful or not seems to rest upon the accounting standards adopted. If the requirements of the charter are followed, the decision is that the plant has been a failure. On the other hand, however, it can be pointed out that the charter requirements are excessively severe, far more so than any private utility would accept. Judged by the practices of private utilities, the Cleveland municipal plant appears to our untutored mind to have been eminently successful. And regardless of accounting details, for that is what they are in this case, the fact remains that the base rate to private consumers is little more than 3 cents per kwh.

HEADLINES

The sports editor of a Buffalo paper recently wrote to the National Municipal League. He thought it was a baseball association.

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Fifteen cities voted to adopt the manager plan during 1931. They are: San Diego, California; Pensacola and St. Petersburg, Florida; Toccoa, Georgia; Dormville, Indiana; Ashland, Kentucky; Bangor, Brewer and Dexter, Maine; Binghamton and Utica, New York; Asheville, North Carolina; Belton and Jacksonville, Texas; and Appalachia, Virginia. San Juan, Porto Rico, now has the plan by legislative enactment.

* * *

The taxicab parking problem has been temporarily solved in Rio de Janeiro by a unique decree of the city council providing that taxis can park on the side of the street which has even house numbers only on even days of the month. On odd days taxis must park on the side having odd house numbers.

* * *

Philadelphia, dubbed "corrupt and contented" by Lincoln Steffens, may still be corrupt. There is room for doubt as to its contentment. Fourteen thousand home-owners, aroused to a pitch not duplicated in the memory of the oldest residents, recently voiced strenuous objection to any increase in the tax rate for 1932 at an impressive mass meeting and stormed the city hall in protest. On the heels of the protest came the news that there was no money in the city treasury to meet payrolls for the last two weeks of December.

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Changing a comma to a period and a period to a comma may land councilmen of San Buenaventura, California, in jail under the terms of a California statute which makes it a crime to alter a record after filing. A slight error in punctuation in the proposed charter gave the manager power to appoint all officers of the city. Council corrected this error at its own risk.

* * *

More excitement than any fire ever caused in Hanover Neck, New Jersey, occurred recently when the new $4000 pumper was stolen from the fire house. It was later found abandoned eight miles from town. Looks as though Hanover Neck needed a manager—or a watchman!

"Until some honest economy is practiced," Chicago banks will lend the city no more money, leading banks tell the Illinois legislature, in special session to help solve the city's financial difficulties. Chicago is not the only place where banks are exerting pressure for improved government. The depression may have its bright side, after all. But how these same bankers are fighting an income tax law for Illinois!

* * *

Centralized purchasing for all departments of the city of Chicago under control of the city council has been adopted by ordinance, following recommendations to that effect by the mayor's advisory commission. Savings of more than a million dollars a year can be effected, according to estimates by Russell Forbes, who acted as consultant. The survey of the existing situation on which the recommendations were based is probably the most complete survey ever made of the purchasing done by a large city. It was part of a general survey of the administrative departments being carried on by J. L. Jacobs for the mayor's advisory commission.

* * *

Two optional forms of government are recommended for Virginia counties by the state commission on county government in its report to the legislature. They are: a county manager form, which is particularly recommended for counties with urban conditions, and larger rural counties; a county executive form, which is sufficiently flexible to be adapted to the needs of any county in the state. Under the latter plan, the board not only appoints the county executive but makes the appointment of all other officers and employees in the administrative service of the county upon recommendation of the executive.

* * *

The last remaining privately owned transportation system in Detroit has been wiped out. The common council voted seven to one recently to replace the lines of the privately owned Detroit Motorbus Company with service of the publicly owned Detroit Street Railway. The day-to-day agreement reached with the company several years ago permitting the private company to use the streets was thus automatically abrogated. It is interesting that in these lean days there are few bitter battles over municipal ownership of local transportation facilities. With the passing of profits in street railways, private capital seeks new worlds to conquer, and objectors to municipal ownership become fewer and fewer!

* * *

Daniel E. Morgan, former city manager, Peter Witt, stormy petrel of the Cleveland council a few years ago and more recently representative of the Van Sweringen interests, Ray T. Miller, county prosecutor, I. O. Ford and F. W. Walz are in the race for the Cleveland mayoralty. Under the recently adopted Danaceau amendment, Cleveland reverts to the strong mayor form of government.

* * *

Consolidation of the city of Hackensack, New Jersey, and the boroughs of Maywood and River Edge is recommended in a report by a commission appointed by the mayor more than a year ago to study the advisability of such a merger. The commission, opposing "strict consolidation" because of "insurmountable difficulties," recommended a plan similar to the organization of Greater New York.

HOWARD P. JONES.

Reducing Public School Costs

THE time has come to ask whether our public schools are worth what they cost

BY H. J. MILLER *Minneapolis Taxpayers Association*

THE usual reply to the question, "Why is the cost of education increasing?" has been, "Increased enrollment and increased cost of all commodities affecting costs of education."

Although this was true once it is true no longer. Restricted immigration and decline in the birth rate are operating to affect materially school population trends. Our birth rate has fallen from 40 per thousand in 1900 to less than 19 per thousand in 1930. This trend was not reflected in costs of education during the last decade because the high school population was setting new records in enrollment which equalled or more than offset the expected financial result. Now, however, the school population curve is being stabilized with a downward tendency.

More striking, of course, is the trend of commodity costs downward. School building programs have generally caught up with the war season slump. Teachers' salaries are not upward, but downward. A recent questionnaire sent out to cities of over 2,500 population by the research division of the National Education Association indicates that for the school year 1931–1932, on the basis of well-scattered replies, only 1 per cent of the cities have a higher salary schedule, while 56 per cent have the same schedule and 39 per cent will decrease salaries in one way or another. The other 4 per cent are unclassified. There are several ways of decreasing salaries within the terms of this questionnaire. One is to withhold all or part of the automatic increases. Another is a flat reduction of the prior year's salary, and in other cases the regular increases are allowed and a subsequent cut imposed.

FINANCIAL EMERGENCY NECESSITATES EXTRAORDINARY ECONOMIES

Thus the major factors which affect costs of education point not to an increase, but a decrease. This is a general long trend picture, however, which assumes the school system will continue on its present keel with no major changes. But a crisis having arrived in our fiscal affairs, demands for retrenchment are more compelling than at any time since the war. Hastily conceived ways of meeting lowered school budgets are being undertaken. All of this may finally work for some good.

Just two months ago, appreciating this condition, a conference of city school superintendents of the larger cities of the country was held at Baltimore to discuss the best ways to reduce the costs of education in this emer-

gency. It is interesting to note the atmosphere of that gathering. There was apparent agreement that emergency measures to reduce the cost of education must be employed. The example of Minneapolis was probably typical, where with a slightly increased school attendance, the school board budget for 1932 is about ¾ of a million dollars under the year 1931. The conference at Baltimore discussed not a theory but ways of meeting these enforced reductions. They report various methods are being used. The most common seem to be to lower teachers' salaries, increase the teacher load, and shorten the school term, but such things as curtailing or entirely eliminating kindergartens, vocational schools, teachers colleges, Americanization classes, night schools, summer schools, teachers' sick leave with pay, music, home economics, manual training, athletics, school supplies, maintenance repairs, nursing service, transportation of pupils, extension department, building insurance, and even the building construction program, are being tried in some school systems.

Of course, what is wise in one school system might not be equally wise in another. A wealth of experience on what can be done is fast accumulating. It may take some time to evaluate the result. By enumerating these actual methods now being used throughout the country to reduce school budgets I think my duty to my topic is discharged. There may be more merit in some of these precipitous acts of the present than some of us believe. You will note that these methods of curtailment now going on cover all of the major factors of school costs, such as teachers' salaries, curriculum, teacher load, and capital outlay. We have nothing but good wishes for these efforts and for the present they are probably the practical problems to discuss, but beyond all of these are there not ways to be found of harmonizing the costs of education with the ability and desires of citizens to support it? There is a well defined feeling, I believe, among this group, that organized education has tried to coldshoulder us out of their field on the theory that we are blundering amateurs. Nothing is to be gained by emphasizing this attitude, but I suspect that if it is true it is all the more likely that you will receive a liberal education if you do enter the portals.

OUR PUBLIC SCHOOLS HAVE BEEN EXPERIMENTING

Our public school system in the last decade has been a great laboratory experiment with the children as the subjects and the taxpayers' money as the subvention. No criticism is made of the fact that it has been an experiment, but it is suggested to those on the outside that the results of these experiments have not yet produced conclusions with sufficient finality to justify the belief that the school problems involving both the value and the cost of education have been solved. The missing link has been a medium to inform adequately the public of the progress of these experiments and to impress upon the experimentors the collective wishes of the public. Now that a crisis has arrived we are beginning to hear the query of organized education, "What do you want to cut out?" The unfortunate thing is that the condition which prompts the query was not foreseen, although many attempts were made to impress upon our educators this need of foresight.

In Minneapolis today parents and teachers associations and other civic bodies are invoking their experience and imagination for ways to adjust next year's school costs to a 10 per cent reduction imposed upon our board of

education. I have talked with many of the responsible officials of our school system, members of the teaching staff, and officers of parents and teachers associations, and I have come to the personal conclusion that some of us have been asleep. One thing is certain, unless public understanding is increased, education will not continue to receive the generous support that it has enjoyed in the past. There is a well defined feeling that organized education has made its own adaptation of these experiments with the consequence that the group interest of education has smothered the interest of the parents and children. No one who believes in the possibilities of education, as we all do, wants that feeling to exist, to say nothing of the condition.

EXPENSIVE INNOVATIONS

During recent years a tremendous change has taken place in the technique of instruction. The recitation method that we knew has been supplanted by the project and other methods. This change has pointed to the desirability of increasing the class period from 45 minutes to a longer period. In place of the old eight periods of 45 minutes each per day with six teaching periods per day per teacher, we have changed to six periods of 60 minutes each per day with five teaching periods per teacher. This change means that while the pupil in most cases receives more teacher minutes per day the teacher gives one-sixth less pupil days. Now, what may actually have happened is a thinning out of the teacher's work so that the pupil does not receive the full benefit expected, while the cost of education does get the expected increase. If the teachers had accepted the lengthened class hour without diminishing her pupil-day load, a different financial result would have followed. This major change in school periods indicates a trend in education seemingly opposite to that in other fields, where the productive capacity of the individual has been increasing, while in education we find that the productive capacity of the teacher, at least in terms of pupil-days, has decreased. There may be good reasons why this should be true, but public understanding must be convinced that the tremendous financial result of this change was necessary and justified by a corresponding increase in the value of the instruction.

Take the question of peripatetic teaching (a plan of moving teachers) which has important possibilities of saving. Any reference to this brings the answer with a rush from organized education that it would not allow each teacher to have a classroom of her own, which is, of course, the major saving of the plan. I make no pretense of knowing how the merits or demerits of the plan would weigh out, I am merely illustrating the reaction of the group interest.

Take also the question of semi-annual promotions. Doubt already exists whether this is a satisfactory solution to the grading problem. Something better may supplant it, which, if it makes a class unit more homogeneous may increase the opportunity for enlarging the pupil load.

Consider the matter of class size. Organized education often asserts that the fewer pupils in a class the better the education received. Strange to say, all the evidence received from educational psychology fails to support this conclusion. Children in large classes are found to receive as good, if not better, training as those in small classes. The superintendent of the Minneapolis public schools last year estimated that as much as $200,000 a year might be

saved there if each teacher had to take care of one more pupil. No discussion of ways and means of reducing school budgets should overlook this field.

Another phase of our present pupil-load situation, the necessity for which is not at all clear to us, is that high schools have substantially smaller pupil-load than grade schools. In Minneapolis grade schools it is 38, in junior high schools 30, and in senior high schools 27. The older the pupil the more he should be able to do for himself. So what we have is a strange reversal of a logical arrangement.

The very matter of an enriched curriculum may be defeating other desirable ends and may be one reason for smaller classes in high schools than in elementary schools. The more courses offered the more difficult the program is to administer economically.

THE JUNIOR HIGH SCHOOL

The junior high system is another illustration. I am not at all sure that it was not an experiment thrust upon us by a professional group rather than an institution jointly agreed upon by patron and educator after careful study. Junior high schools may not cost more money than the old system, but may it not be possible that the same good ends could have been accomplished in some better and possibly more economical way? There is certainly much sentiment abroad among the people that the junior high school breaks the home ties too soon and results in assuming a plane of conduct above the age of the pupil.

The fact that the schools accept children at kindergarten age may or may not have anything to do with the parents' desire to reduce the distance between schools, but there is a growing question as to whether a whole year of kindergarten is really necessary. There seems to be no scientific proof of its beneficial effect on later school progress.

Teachers' pension systems are installed by citing the usual benefits, one of which is that they offer a satisfactory disposal of superannuated teachers.

Automatic salary scales are adopted which ignore rewards for superior teaching. General increases in salary scales are put through on the theory offered by organized education that better teachers will be attracted thereby, or that better service will be rendered by the same teachers.

The next step is a teacher tenure law which operates to defeat the pension system as a means of retiring superannuated teachers and displacing mediocre teachers with those more efficient whom the new salary scale is supposed to attract, to say nothing of lessening the possibilities that the same teacher will render better service.

THE LAYMAN IS BECOMING SKEPTICAL

When a school system has passed through this series of steps, which to my knowledge some have, can laymen be blamed for wondering who is to be the beneficiary of this great educational experiment? Some of those who have watched these and many other experiments in education at close range, such as the single salary scale, equal pay and automatic salaries, are questioning the wisdom of continuing many of them. Dean Seashore in his pamphlet, *Learning and Living in College*, says: "We make students helpless by constant help. We teach too much." We may at least hope that educators will perfect techniques of providing education which will be less costly and more valuable. There is a restlessness which indicates something will be born. The experiments now coming out of the laboratory question the value of any instruction that falls upon students

with passive attitude. This in turn questions the whole system of compulsory education.

Before this and many other important issues in education can be intelligently approached we must have a restatement of our philosophy of education. There is a surprising lack of agreement on what is the real purpose of our schools. Are they for utility or morality? If it is only for better equipping our children to make a living we might question our whole high school system. Are we making school attendance synonymous with acquiring education? Albert Wiggam, the eminent biologist and psychologist, in his recent book, *The Marks of an Educated Man*, offers as one of these marks the suggestion that we cannot sell an educated man magic. In this connection he says:

> Just now I think the American people are immensely oversold on the magic of education—not education precisely, but on schools and colleges and the paraphernalia, curricula and mechanism of education. The notion, for example, that everybody should go through the eighth grade or high school or college or even remain in school until the age of fourteen or sixteen years, is just a piece of magic. The notion that education, if we mean by that a formal school attendance, is a solution of the problems of either life or democracy, is pure hokum. Education is our best bet for a solution, but mere school attendance is not. Education and school attendance do not have any perfect association with each other. There are so many constructive things going on in education that I fear this may be mistaken for a wholesale indictment of our schools. It is not. But there is, nevertheless, a lot of magic for sale in our school systems.
>
> I should say, in a broad way, that just in the proportion a school system teaches young people things and habits they use extensively in later life it is to that extent educative; the children are really going through a process of education. On the other hand, just in the proportion that a school system teaches things and habits that are never used afterward, that do not fit the pupil effectively and happily into the living institutions and culture of his time, to that extent the system is a purveyor of magic. The notion that culture results in some mysterious way from parsing Latin sentences or declining nouns, or digging for Greek roots is just as much a piece of magic as the mystic words the South Sea Islanders thought they needed to make their boats float on the water.
>
> Of course, if a man has gone through any of these survivals of fetishism, thaumaturgy and general educational witchcraft, he can, when in polite circles pronounce some of the magic formulas; if he have an extraordinary memory he may guess vaguely at what the speaker of the evening meant when he quoted eight or ten words in Latin from Sallus or Ovid, and may have a little idea of what is meant by a sine or cosine, but the notion that any large number of mature citizens who heard of these things in school or college will have used them sufficiently as agencies of living and processes of life for them to be called culture, is again just as much magic.
>
> Various surveys and educational measurements have shown that at least seventy-five per cent of the young people will never use these things or in any way refer to them during their whole lives, that scarcely one out of a dozen ever learns them to start with, and that at least eighty per cent of what is partially learned is forgotten and has to be learned over again before the learner can bring it into practical use, in the rare event that he ever should want to use it!

Mr. Wiggam's may be an intentional over-statement.

Do not make the mistake of misunderstanding my questioning. I only state that I believe our whole educational system must pass through the same questioning that other private and public expenditures are passing through. Educators should insist that the public follow education more closely and more understandingly in its thinking and its experimentation so that a more perfect acceptance of public education and its methods will result.

What Municipal Home Rule Means Today

I. California Since 1916

CALIFORNIA cities have made extensive use of home rule powers. Attitude of the legislature and the courts is increasingly liberal

BY EDWIN A. COTTRELL — *Stanford University*

THE general tendency in the past fifteen years has been for the courts to be more liberal in allowing municipalities to handle a wider range of municipal powers freed from general legislative control.[1] Most of the later decisions have given a larger, broader, and, we feel, a more justifiable construction to freeholder charter powers. As has been so often pointed out, there seems to be no clear line of demarcation in the general laws or charter provisions as interpreted by the courts between municipal affairs which are "local" or those "general" in character. Most of the newer charters have placed more emphasis on the form of government rather than on the expanding or contracting powers of government. The freer exercise of local powers has been considerably curtailed also by the growing process of administrative control or supervision by state authorities.

EDITOR'S NOTE.—The article by Mr. Cottrell begins our series on What Municipal Home Rule Means Today. Ten or twelve states with widest experience under constitutional home rule grants will be treated in successive issues.

[1] Fifteen years have passed since Howard Lee McBain published his excellent and monumental work on *The Law and the Practice of Municipal Home Rule*, Columbia University Press, New York, 1916, pp. 724. "Home Rule in California," Chaps. VII–XI.

There is a disposition on the part of the legislature to decide its course by a semi-official vote of the cities or their representative, the League of California Municipalities. There is no evidence, generally speaking, of the legislature's attempting to deprive the cities of the home rule they have enjoyed. Nor is there a tendency of the legislature to impose its will on the cities, for it seems to allow the cities to decide on municipal affairs by themselves. All attempts at the last session of the legislature to deprive the cities of their privileges were defeated. A constitutional amendment to tax municipalities has been defeated by the legislature at several sessions. There is, therefore, much evidence of a broadening of municipal powers as the legislature accepts measures introduced on behalf of the cities.

CHARTER ACTIVITY GREAT

Under the provisions of article XI, section 8 of the California constitution, any city of 3,500 population may adopt a freeholder charter. In 1916 there were fifty-three cities which might adopt home rule charters and thirty-two had done so. In 1920 thirty-six out of seventy-six had adopted charters. In 1930 forty out of one hundred twenty-three had taken advantage of

this provision. There are two hundred seventy-eight incorporated places in the state. Thirty-five cities in the state are using the city manager form of government; twenty-four are under freeholder charters, and eleven under state statute.

Practically all of the larger cities of the state have adopted new charters or considerably amended old charters since 1916. Most of these cities have adopted the council-manager form of government and several have followed rather closely the proposals of the National Municipal Leagues' Model Charter. Los Angeles and San Francisco have each adopted charters which are unique in form and to a certain extent cumbersome in operation. The new San Francisco city and county charter goes into operation this month, and will be of great interest to those following the newer forms of government.

The constitution has been amended in only two minor particulars since McBain wrote in 1916. In 1922 an amendment was inserted to clarify an amendment of 1914 which provided for the creation of boroughs to exercise general and special municipal powers. The words added provided that such powers shall not be amended or abridged in any manner, without the consent of a majority of the electors of the borough. In 1930 a clause was eliminated which provided that amendments to a charter must be voted upon during the six months next preceding a regular session of the legislature or before the final adjournment of that session. This gives the cities the power to adopt amendments at a general or special election.

A word should be said of the progress of county home rule under the constitutional amendment of 1912.[1] Five counties have adopted freeholder charters—Los Angeles and San Bernardino in 1913, Butte and Tehama in 1917, and Alameda in 1927. Charters have been defeated in Napa in 1917, Sacramento in 1922, San Diego in 1917 and 1923, Santa Barbara in 1917, and Stanislaus in 1930. The California Commission on County Home Rule was authorized by the legislature in 1929 to ascertain why more counties had not taken advantage of this constitutional provision. The report submitted to the governor and legislature in December, 1930, discusses the conditions in the counties of the state and makes suggestions for future action.[2]

[1] Article XI, section 7½.

CONSTITUTIONAL PROVISIONS

Tooke says that California has been for the past years the battleground of the conflicting theories of municipal home rule under constitutional sanction.[3] The provisions of article XI, subject to so varied and often inconsistent interpretations as that of the method of enacting home rule charters and ratification by a majority in each house of the legislature have been the bone of contention. The courts have attempted to go beyond the question involved and by observation and dicta interpret questions that may arise later. The courts have held [4] that where there is a conflict between a state law and a city ordinance under a freeholder charter, in regard to a municipal matter, the city ordinance prevails, but in all affairs of state policy and government, the general laws control.[5] A city is restricted in the exercise of its

[2] *Final Report of the California Commission on County Home Rule*, Dec., 1930, State Printing Office, 236 pp.

[3] Tooke, C. W., Judicial Decisions, NATIONAL MUNICIPAL REVIEW, Sept., 1927, p. 593.

[4] City of Los Angeles v. Central Trust Co., 173 Cal. 323 (1916); Helmer v. Superior Ct., 48 Cal. App. 140 (1920).

[5] People v. City of Long Beach, 155 Cal. 604 (1909).

powers by the constitution and general laws. It has only those powers expressly conferred and such as are necessarily incident to the declared objects and purposes of the municipal corporation.[1] But where no particular provisions are made covering the matter falling within the classification as a "municipal affair," the state law controls, and where no special proceeding is outlined touching a municipal subject, the state law always controls by force of the constitution.[2]

In *Taylor* v. *Cole*[3] the Supreme Court unanimously decided that a home rule charter or amendment thereto when ratified by the legislature under article XI is a law of the state legislature. Thus early decisions (*People* v. *Gunn*[4] and *People* v. *Toal*[5]) are definitely overruled, and the doctrine as set forth in *Ex parte Sparks*[6] and *Fragley* v. *Phelan*[7] is approved and settled. The court in *Taylor* v. *Cole*, holding that the culminating act of ratification by the state legislature is conclusive upon the question of the regularity of the preliminary proceedings, has insured the administrative regularity of home rule charters and of amendments and rendered them immune from attack by private individuals. They now have the status of *de facto* if not of *de jure* corporations and the validity of their organization can be questioned only in a proceeding *quo warranto* as the suit of the state itself. Every charter amendment is now to be regarded as a special statute repealing *pro tanto* the existing general statutes, while outside the field of exclusive powers committed by the constitution to municipalities, a general statute will repeal the charter provisions in conflict therewith.[8]

In determining the power of the city over public utilities the court finds[9] in sections 6 and 8 of article XI that its powers over municipal affairs become all embracing, restricted and limited by the charter only and free from any interference by the state through general laws including laws governing the railroad commission's powers over public utilities. The result is that the city has become independent of general laws upon municipal affairs. If its charter gives it powers concerning them, it has those powers; if its charter is silent as to any such power, no general law can confer it. Under sections 22 and 23 of article XII, and section 43b of the Public Utilities Act of 1915,[10] the railroad commission has jurisdiction to require state railroads, whose lines of track pass through the city of Los Angeles to establish viaducts or subways at street crossings in such city, as the regulations of such railroads in that particular is a matter of general state concern and is not a "municipal affair" within the meaning of sections 6 and 8 of article XI as amended in 1914 or of subdivisions 51 and 53 of section 2 of the Los Angeles charter which were added by amendments that took effect in January, 1917.

In the case of *Morgan* v. *City of Los Angeles*[11] the court is called upon to decide whether the city has power to issue bonds as a portion of its municipal affairs. The court says:

> The intent and effect of this amendment [1914] is very clearly to make municipal affairs prevail

[1] Hurst v. City of Burlingame, 207 Cal. 134 (1929).

[2] Hyde v. Wilde, 34 Cal. App. Dec. 311 (1921).

[3] 257 Pac. 40 (1927). [4] 85 Cal. 238 (1890).

[5] *Ibid.* 333 (1890). [6] 120 Cal. 395 (1898).

[7] 126 Cal. 383 (1899).

[8] Tooke, C. W., Judicial Decisions, in National Municipal Review, Sept., 1927, p. 593.

[9] Civic Center Asso. of Los Angeles et al. v. Railroad Comm. of California, 175 Cal. 441 (1917).

[10] *California Statutes*, 1915, p. 137.

[11] 182 Cal. 301 (1920).

over general laws in case of conflict between them. But there is nothing in its language and nothing in its history which requires or justifies the assumption that it destroys the operation of general laws within chartered cities where there is no conflict between them and the municipal laws or regulations of the city even though the subject dealt with be a "municipal affair." By the constitutional provision as it now reads, chartered cities may be wholly independent as to what laws or regulations they may wish to adopt in municipal affairs, but unless they adopt laws or regulations which are in conflict with general laws on the same subject, the latter should still operate both within and without the cities by virtue of the fact that they are general laws of the state of which the cities are still a part.

Prior to the amendment of section 6 of article XI in 1914, and after its amendment in 1896, a charter framed and adopted under the authority of the constitution was subject to be controlled by general laws except in municipal affairs; and in accordance with the construction placed upon the amendment of 1896, it was necessary to enumerate in such charter and in an amendment thereto the specific powers which the city might exercise in relation to municipal affairs in order to remove the city in its control of such affairs from the operation of general laws. One of the purposes of the amendment in 1914 was to obviate the necessity of specifically enumerating in the charter all powers relating to municipal affairs in order to remove the city as to such matters from the operation of general laws.[1] A city having failed to avail itself of the right conferred by this amendment is in the same situation as it was prior to that amendment. Section 2 of article I of the new charter of San Diego is worded to cover this provision:

> The City of San Diego, in addition to any of the powers now held by or that may hereafter be granted to it under the Constitution or Laws of this State, shall have the right and power to make and enforce all laws and regulations in respect to municipal affairs, subject only to the restrictions and limitations provided in this Charter; provided, however, that nothing herein shall be construed to prevent or restrict the City from exercising, or consenting to, and the City is hereby authorized to exercise any and all rights, powers and privileges *heretofore or hereafter* granted or prescribed by General Laws of the State.

By virtue of the constitution and the charter amendment which became effective January 17, 1925, the board of supervisors of the city and county of San Francisco is given plenary powers to legislate in all purely municipal matters subject only to such restrictions as are found in its charter. The manner of enacting municipal ordinances is declared to be a municipal affair. The fact that the board of supervisors in the enactment of an ordinance prescribing height limitations on buildings failed to follow the procedure contained in section 4 of the Enabling Act of 1917,[2] did not invalidate the ordinance where said board of supervisors in the adoption of said ordinance complied with all the requirements of the charter in reference to the passage and enactment of ordinances. The Enabling Act of 1917 in so far as it prescribes the steps necessary to be taken by the legislative body of a municipality in the enactment of zoning ordinances, has no application to San Francisco.

A peculiar decision was given by the court in the case concerning the manner of election of the council under the new charter for Los Angeles in 1923.[3] The court held that, if at the time a charter is submitted to the electors, there is also submitted a separate proposition which is designed to take the place of one of the charter provisions, the separate proposition takes

[1] Stege et al. v. City of Richmond, 194 Cal. 305 (1924).

[2] *California Statutes*, 1917, p. 1419.

[3] Horn v. Allen, 195 Cal. 121 (1924).

effect if it receives a majority of favorable votes, notwithstanding the fact that a larger number of votes were cast in favor of the charter. This decision gave Los Angeles a council elected by wards instead of at large as provided in the proposed charter submitted by the freeholders.

The position of the legislature in reviewing the methods of adopting a charter by the cities has been examined by the courts in two recent cases. In *Taylor* v. *Cole*,[1] cited above, the court said that an amendment approved by the legislature constitutes a legislative enactment repealing general laws of the state inconsistent therewith. Furthermore, it is a duty of the legislature to see that proceedings by which charter amendments are proposed are regular in all respects, and its conclusion that an election was regular is not open to question in its proceedings. Citizens or officials may not question the existence and validity of an amendment to a city charter after its approval and ratification by the legislature.

The legislature approved a freeholder charter adopted by the people of San Buenaventura (1930) even when the clerk of that city explained in the certificate of election that the charter had not been advertised as provided by the constitution. The court in *quo warranto* proceedings declared [2] that where it appeared from the preamble to the resolution approving the charter that no advertisement giving notice of the fact that copies of the proposed charter were ready for distribution to the voters was placed in a newspaper as required by section 8 of article XI of the constitution, the proceedings attacked were invalid and ratification of the charter subsequently by the legislature did not make it valid.

[1] 201 Cal. 327 (1927).

[2] People etc. v. City of Buenaventura, 82 Cal. Dec. 407 (Sept. 15, 1931).

The newspaper published the charter in full in several issues, but this did not overcome the omission of one of the steps necessary to comply with the constitutional provisions. One justice dissented, upholding the reasonableness of the proceedings in both the city and legislature.

The new San Francisco charter blanketed in the auditor, coroner and county clerk as appointive rather than elective officers. Candidates for these offices submitted nomination petitions to the registrar who refused to place their names on the ballot. The memorandum opinion was stated by the chief justice:[3]

> Under a broad, and the members of the court feel a justifiable, construction of the charter provision, it was competent for the people of San Francisco to provide in the new charter that only some of the city and county officers heretofore elected should continue to be elective officers, and that the others should either continue in their respective offices or be appointed to their positions in the manner and by the appointing power provided in the charter.
>
> There is a color of authority for the contention advanced by the petitioners that the offices of Coroner, County Clerk and Auditor should be voted for, but we feel that to so hold in the present instance, and under the condition of the law and the facts of this case, *would be a step backward rather than in keeping with the progressive movement of the citizens of San Francisco which led to the adoption of the new charter.*
>
> We can conceive of no good reason why a city and county like San Francisco may or may not elect to do what a county may do in the matter of selecting its officers. *In view of the present tendency toward city government freed from general legislative control,* and with larger powers of selection of local officials lodged in some responsible appointing power, we feel that in reconciling the apparent discrepancy in the language of the two sections of the constitution we are not doing violence to any rule of constitutional construction in according both the same privileges.

[3] Rand et al. v. Collins, *The Recorder* (San Francisco), Oct. 14, 1931, 82 Cal. Dec. 585 (1931).

MUNICIPAL AFFAIRS

A few cases have been decided by the court enlarging the understanding of "municipal affairs." Compensation of all officers and employees as a wage for services performed, and not within the meaning of the law creating a system of workmen's compensation or indemnity for death or injury is within the power of the municipality, but indemnification to heirs based on earning capacity of the deceased is a state policy and not municipal, and a pension system of a municipality does not take the place of the workmen's compensation law.[1]

The San Francisco charter had omitted the requirement of general law that a voter must add the date of his signature to the recall petition. A freeholder charter may provide for the removal of officers as a municipal affair, and any provision contrary to the state law on the subject is not inconsistent therewith or controlling.[2] A municipality is liable for damages to a pedestrian for personal injuries sustained as a result of a fall from a sidewalk where there was a fifteen-inch drop from the sidewalk to the street level and where the city was accustomed to maintain aprons at such street intersections. A contention that the city was not responsible under contrary provisions of general laws was denied by the court.[3]

The question of the regulation of motor vehicles has given considerable trouble to municipal councils. The power to regulate municipal affairs must be fairly and reasonably applied, and not invoked or exercised to impose unreasonably burdensome duties or obligations on particular classes or persons. A regulation restricting the trucking business to vehicles not exceeding one ton to certain streets within the city limits was not granted by the legislature but is within the power of the municipality under its exercise of municipal affairs.[4]

The question of the sufficiency of a recall petition or of the legality or regularity of any proceeding relating thereto, is the discretion of the administrative officer authorized therein to have such power and the superior courts are excluded from revising or annulling such jurisdiction.[5] Former policemen who were discharged after hearing by the city manager were denied pensions by the pension board and their decision sustained by the court as within their powers.[6] Long Beach has power under its charter and the state law to exercise all state rights in tide and submerged lands within its boundaries and may develop and regulate the same for purposes of commerce.[7] The court held that a municipal corporation possesses and can exercise only those powers granted in express words; those necessarily or fairly implied in or incidental to the powers expressly granted; and those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable.

The Chamber of Commerce of the city of Sacramento had issued publicity material on behalf of the city under provisions of the charter. The treasurer alleged that this was an improper delegation of power by the city to the chamber. The court holds that advertising the city is a public purpose

[1] City of Sacramento v. Industrial Accident Commission, 74 Cal. App. 386 (1925).

[2] Scheafer et al. v. Herman et al. Board of Election Commissioners of the City and County of San Francisco, 172 Cal. 338 (1916).

[3] Rafferty v. City of Marysville, 207 Cal. 657 (1929).

[4] Whyte et al. v. City of Sacramento, 65 Cal. App. 534 (1924).

[5] Baines v. Zemansky, 176 Cal. 369 (1917).

[6] Sevina v. Hickok, 65 Cal. App. 244 (1931).

[7] Long Beach v. Lisenby, Mayor et al., 175 Cal. 575 (1917).

and within the discretion of the council to contract with the chamber to perform this function.[1]

TAXATION

A legislative act authorizing taxation for a private purpose is unconstitutional, as under our system of government taxes can be laid only for a public object. Section 4041, subdivision 9a of the *Political Code* authorizing boards of supervisors to purchase, lease, construct, or otherwise acquire, own, operate, manage, and control, in any city of the state, a cement manufacturing plant and to sell the products of the same in such manner and upon such terms and conditions as to them shall be deemed proper, provided that the state and municipalities or public corporations of the state shall have a preferred right at the same price as the products are offered to private persons to purchase the same, is void, as authorizing taxation for a private purpose.[2]

A municipal license ordinance imposing a license tax on drayage concerns will not be held illegal as being oppressive, unreasonable, arbitrary or discriminatory, nor will its effect be held extraterritorial or an attempt to take private property without compensation for a public purpose merely because of its application to a drayage concern which has no office, depot, warehouse or equipment situated or located within the limits of said city.[3]

A special assessment for street work is invalid unless levied according to the benefits received which is the basic foundation of such special assessments.[4] The council has the power to determine the limits of an assessment district and the amount that the city as a whole shall pay for the improvement. The passage of the ordinance must be regarded as a finding of fact unless fraudulent motives are shown.[5] All questions of procedure on the hearing of protests against public improvements are primarily within the discretion of the city council.[6]

DELEGATION OF POWERS

The delegation of power, even though involving discretion to municipal boards or officers to grant and refuse permits where the occupations and businesses are the proper subject of police surveillance and regulation is sustained on the theory that such officers will not use such powers villainously or for the purpose of oppression or mischief. The city council has authority to abolish taxicab stands from the streets, not because taxicab operations are common carriers, but because of their private use of public highways, which are owned and paid for by the public and are open alike to all persons. The privilege of maintaining taxicab stands on streets can be granted only under proper regulations which may be properly confided to the discretion of a municipal administrative board or officer.[7]

A municipal ordinance delegating to a city electrician power to determine whether electrical installations are dangerous, without defining the conditions which might exist, is a proper delegation of power and is not arbitrary or oppressive.[8] The board of police commissioners of the city may grant or

[1] Sacramento Chamber of Commerce v. Stephens as City Treasurer of the City of Sacramento, 81 Cal. Dec. 831 (1931).

[2] City of Los Angeles et al. v. Lewis, Auditor, etc., 175 Cal. 777 (1917).

[3] California Fireproof Storage Co. v. City of Santa Monica et al., 206 Cal. 714 (1929).

[4] The Spring Street Co. v. City of Los Angeles, 170 Cal. 24 (1915).

[5] Allen et al. v. City of Los Angeles, 210 Cal. 235 (1930).

[6] Cowart et al. v. Union Paving Co. et al., 296 Pac. 945 (1931).

[7] Ex parte Graham, 93 Cal. App. 88 (1928).

[8] Gaylord v. City of Pasadena et al., 175 Cal. 433 (1917).

refuse permits to operate a second-hand book shop and this power is not an arbitrary grant on the part of the council.[1] It is an abuse of power and discretion on the part of the city council to refuse a permit for a riding academy, when properly presented, on the ground that the location of such would be objectionable to the general welfare of the public at some future date.[2]

An important case [3] on the initiative and referendum involved the thirty-day period for filing, the use of the registration list prior to the new registration period, a signature of a prospective voter, and wrong precinct numbers after a change in precinct lines. Where there is no contradictory provision in the city charter, the state statute may be said to govern.

A few cases on the power of municipalities to zone their area and administer such laws have appeared in recent years. A hospital for mental or nervous cases already existing cannot be affected by a retroactive application of the zoning law.[4] Plans to build contrary to a pending zoning ordinance may be refused a permit by the building inspector.[5] A sixth-class city cannot adopt a zoning ordinance by initiative as the state zoning law takes precedence over the initiative for that class.[6] To prohibit the drilling of an oil well on a dairy because of a zoning ordinance to that effect, regardless of the surrounding population or conditions, was held unreasonable and void.[7] In general, the courts have upheld the power to zone as long as unreasonableness or retroactive conditions are not present.

A perusal of the cases handed down by the courts and the practice of administrative officials in the cities and counties of the state will show a gradual, if not a rapid, increase in the exercise of home rule powers. This is especially shown in the exercise of the financial procedure and police power.

It might be mentioned that the legislature passed an act at its last session considerably limiting the discretion of the municipal council in matters of special assessments.[8] This action was justified as a result of the continued abuse of this method of over-assessing property for public improvements against the protests of property owners supposed to be benefited. The conclusion might be drawn from observation of California municipalities in action that the operation of the home rule principle is increasing in the more liberal attitude of the legislature and the courts and especially in the attention which the voters are giving to matters of local concern.

[1] Ex parte Holmes, 187 Cal. 640 (1921).

[2] Bleuel v. City of Oakland et al., 87 Cal. App. 594 (1927).

[3] Ley v. Dominquez, City Clerk of Los Angeles, 81 Cal. Dec. 818 (1931).

[4] Jones et al. v. City of Los Angeles, 211 Cal. 304 (1930).

[5] Lima v. Woodruff, 107 Cal. App. 285 (1930). Brougher et al. v. Board of Public Works of the City and County of San Francisco, 205 Cal. 426 (1928); 107 Cal. App. 15 (1930).

[6] Hurst v. City of Burlingame, 207 Cal. 134 (1929).

[7] Del Fanta v. Sherman, 107 Cal. App. 746 (1930).

[8] *California Statutes* (1931), chap. 642.

The Missouri State Survey Commission

SWEEPING recommendations of the Survey Commission arouse bitter antagonism but a degree of progress is recalled in the compromise legislation affecting state revenues, school aid and state institutions

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POST-WAR economy and party rivalry in Missouri forced tax reductions, and national prohibition eliminated lucrative sources of state as well as local funds. In consequence of these revenue losses and the ever increasing cost of state functions, old and new, virtually no funds have been available during the past decade for buildings and improvements at state institutions and for additional state support of public education.

In accord with the recommendations of Governor Henry S. Caulfield, the general assembly in 1929 authorized the appointment of a commission of seven members to ascertain the needs of the state institutions, the public schools and the several departments of state government, and to recommend sources of additional state revenue. Theodore Gary, business executive of Kansas City and former chairman of the state highway commission, was designated as chairman of the commission. The final report was presented to the governor on November 30, 1929, as required by the act authorizing the survey.[1]

[1] Report of the State Survey Commission to the Hon. Henry S. Caulfield, Governor of Missouri (November 30, 1929), 189 pp. Six supplementary reports also were published containing information and recommendations submitted to the commission by its advisers, namely: Penal and Eleemosynary Supporting Data; A Preliminary Report of the Survey of the Public Schools; Preliminary Report on Publicly Supported Higher Education; The Finances of the State of Missouri; The Taxation System of Missouri; and Financial Administration of the State of Missouri.

FINDINGS AND RECOMMENDATIONS

Among the many facts and observations included in the reports of the commission's advisers perhaps the following were most significant: (1) Serious overcrowding in the penal and eleemosynary institutions, accompanied by insanitary conditions, extreme fire hazards, inadequate facilities for hospital and medical care and for educational and recreational development, and insufficient segregation; (2) comparatively low salary schedules in state educational institutions, inadequate library and laboratory facilities, and insufficient appropriations to permit the replacement of old buildings and the purchase of land and the erection of additional buildings to provide for normal expansion; (3) several thousand rural school districts, maintaining in most instances one-room school buildings, with poor equipment, poorly-paid and inadequately trained teachers, and in the majority of cases

a daily attendance of less than 20, and possessing insufficient taxable wealth to permit any appreciable improvement in educational standards; (4) diffusion of responsibility for tax administration among several state agencies and local officers, with inadequate personnel and authority for efficient state supervision of property and income assessments; (5) a flagrant abuse of the special fund system in handling state finances, a confusion of the functions of accounting and auditing, and an ineffective system of budgeting and fiscal control; and (6) state capacity to pay taxes not much if any below the average for the United States, with a total per capita tax burden 20 per cent lower than the average for all the states.

To meet the needs of the state institutions and the public schools, as revealed by the survey, the commission recommended a ten-year "pay-as-you-go" program of increased state expenditures totaling $192,689,400, of which $39,615,000 was suggested for buildings and permanent improvements and $153,074,400 for current expenses, including additional state aid for schools. To finance this enlarged expenditure plan, the commission proposed to double the existing corporation franchise tax rate of 1/20 of 1 per cent, to increase the rate on corporate income from 1 to 2½ per cent, to substitute graduated rates ranging from 1½ to 5½ per cent for the existing flat rate of 1 per cent on individual incomes, and to transfer the county foreign insurance tax fund, used for school purposes, to the state. The commission estimated these additional sources of state revenue would yield $158,800,000 over a twelve-year period.[1] No specific proposals were made to provide the additional $33,889,400 included in the expenditure program, but the commission did recommend "that the next legislature provide for a careful study and revision of the taxation system, as well as the administration thereof, and that this study include luxury taxes."

Though the commission made a rather detailed inquiry by the questionnaire method into the organization and functions of the several state offices, boards, commissions, and departments, it concluded that neither time nor funds were sufficient for a careful analysis by disinterested and competent authorities such as would be required to serve as the basis of proposals for administrative reorganization. No comments or suggestions were included in the final report relative to the recommendations of the commission's financial advisers concerning the collection and disbursement of state funds, budgeting, accounting, and auditing.

TAX RELIEF A MAJOR CONSIDERATION

More pressing than any other need, in the judgment of the commission, was "a readjustment of assessments and an equalization of the tax burden." To accomplish this important objective, it was proposed: (1) To transfer to the state the full cost of supporting public patients in the state eleemosynary institutions, thus relieving the counties of an estimated expenditure of $34,000,000 during the ten-year period;[2] (2) to establish a minimum standard of public education, whereby the state would guarantee to every school district levying an annual tax of 20 cents on the $100 valuation for

[1] The commission recommended (p. 172) that "no funds be expended nor obligations incurred to carry out the program outlined herein until the taxes levied to support the plan have been in effect one year."

[2] The counties in Missouri pay at the rate of $18 per month toward the support of their public patients in these institutions.

school purposes sufficient money to provide $900 a year for each elementary teaching unit and $1,200 a year for each high school teaching unit, these amounts to be increased to $1,500 and $2,000 in later bienniums with proportionate increases in the minimum local levy up to 35 cents. Of the proposed increase of $100,600,000 in state expenditures for this phase of the ten-year program, approximately two-thirds represented a transfer of school costs from the districts to the state and the remaining one-third an actual increase in total expenditures for school purposes.[1] The commission advocated the creation of county boards of education with authority to consolidate school districts, subject to the approval of the voters in each district affected, but the only incentives to consolidation suggested were to make state aid above the minimum standard contingent upon the acceptance of the larger districts proposed by the county boards, and the grant of state aid for school construction in consolidated districts on the basis of $1,000 for each one-room school thus displaced.

THE ISSUES ARE DISCUSSED

A state-wide conference in Jefferson City on May 27, 1930, called by the Missouri Press Association, authorized the appointment of an Associated Taxpayers' Committee which assumed active leadership in the campaign to develop public support for the commission's proposals. The Missouri State Teachers' Association and the Missouri Farmers' Association also were active advocates of the program. Chairman Gary, in a radio address on July 25, gave voice to what soon became a popular slogan of the campaign, namely, that tangible property in Missouri constitutes only 20 per cent of the total wealth of the state but bears 96 per cent of the total state and local tax burden. Though the accuracy of this statement was challenged frequently, it persisted and was quoted widely.

The Associated Industries of Missouri and the Chambers of Commerce of St. Louis and Kansas City entered the lists in opposition to the tax relief program and offered substitute proposals involving a bond issue for public buildings and moderate increases in the flat rate tax on corporate and individual incomes to provide some additional state aid for education and for increased maintenance at state institutions. The National Industrial Conference Board made a detailed study of the fiscal problem in Missouri at the request of the Associated Industries and many of its conclusions were pointed directly at the proposals of the survey commission.[2] Dean Isidor Loeb of Washington University, in response to a request from a committee of St. Louis business men, prepared a series of articles appraising the commission's recommendations which served to center public attention on the major issues involved.[3]

[1] The constitution of Missouri (Art. X, Sec. 11) fixes maximum tax levies for school purposes of 60 cents in cities with a population of 100,000 or more and of 40 cents in all other school districts, which may be increased to $1 and 65 cents, respectively, with the approval of the voters in each district. The average local school levy is about 50 cents, but many of the smaller districts vote the 65-cent maximum.

[2] National Industrial Conference Board, *The Fiscal Problem in Missouri* (New York, 1930), 359 pp.

[3] Loeb, Isidor, *Report of the State Survey Commission—An Explanatory Analysis* (1930), Bulletins Nos. 1 to 7. (Published and distributed by the Associated Industries of Missouri, Railway Exchange Building, St. Louis.)

THE GOVERNOR'S SUBSTITUTE PROGRAM

In his biennial message to the legislature on January 8, 1931, Governor Caulfield, after commending the Survey Commission for its invaluable service, proposed a much more moderate program, the essential features of which were: (1) The adoption of the "pay-as-you-go" policy for capital outlays as suggested by the commission, but with an expenditure of only $20,000,000 during the ten-year period; (2) an increase in the flat rate tax on corporate and individual incomes from 1 to 2 per cent to secure an additional $4,000,000 a year in state revenues; (3) increased state aid to school districts to insure the proposed minimum standard but on the basis of the existing constitutional maximum levy of 65 cents instead of a 20-cent local levy, at an estimated cost of $1,040,000 a year; and (4) the expenditure of the remaining $1,000,000 in increased state funds to meet the building and maintenance needs of the educational institutions. He urged the general assembly not to confuse proposals for tax relief with emergency provisions for state institutions and the public schools.

HOUSE ADOPTS SURVEY PROPOSALS—OPPOSITION IN SENATE

House bills embodying the recommendations of the commission were referred to a special standing committee of 25 members, under the chairmanship of Langdon Jones, a member of the commission and a determined advocate of the tax and school measures. The income and corporation franchise tax bills were passed on February 19 by votes of 113 to 25 and 104 to 29. The public school bill also was passed on March 12, 118 to 15, subject to an important amendment which prohibited increases in district school levies above the 20-cent minimum, except in cities of 50,000 or over, without the approval of the voters.

Following a protest meeting in St. Louis, at which resolutions were adopted condemning the Survey Commission's program as a "monumental tax grab" and insisting that a doubling of the existing flat rate tax on incomes was "all that one class of Missourians could stand for the relief of another class," several hundred business leaders journeyed to Jefferson City by special train to support their spokesmen before the senate committee. Commercial leaders served notice that every available means, such as referenda petitions and court action, would be employed to delay or prevent the operation of these bills if they were passed, and threatened to remove their business establishments to other states if they ultimately became law. Not to be outdone, farmers, editors, teachers, and business men from the smaller communities and rural sections crowded the senate chamber during the closing day's hearings and applauded the ringing challenge of Representative Langdon Jones addressed to city industries "to pay their just share of the tax burden or . . . leave the state."

COMPROMISE INCOME TAX BILL

The senate ways and means committee, confronted with conflicting estimates as to the probable revenue to be derived from the commission's tax measures and sensitive to the general business depression and the importance of avoiding delay, favorably reported the tax bills with amendments reducing the rates on both corporate and personal incomes. When it seemed a deadlock was inevitable, Governor Caulfield suggested a conference to

draft a compromise measure. Accordingly after several unsuccessful attempts, representatives of the opposing forces and senate leaders agreed upon a 2 per cent rate on corporate income, and graduated rates on individual incomes ranging from 1 to 4 per cent, with an alternative flat rate of 2 per cent.[1] These compromise rate schedules, which it was estimated would yield approximately $5,325,000 more a year than the receipts upon incomes of 1930 under the existing 1 per cent rate, were adopted by the senate. House leaders, recognizing the futility of seeking higher rates through conference committee action and desirous of avoiding further delay, yielded to the inevitable and that body voted to concur in the senate amendments. The bill was approved by the governor on April 16.

Opposition to the bill increasing the corporation franchise tax prevented a vote upon it in the senate. Proposals in both houses to repeal the 5-cent state tax on general property were defeated. A house measure for a sales tax on cigarettes and cigarette papers died in committee in the senate.

SENATE ADOPTS COMPROMISE SCHOOL BILL

Critics of the Survey Commission's public school aid bill not only opposed the low minimum local levy as a tax relief measure but also objected on the ground that a fixed state guarantee would tend to perpetuate the small rural school districts, that it would weaken local initiative and responsibility in the support of education, and that it would create further inequalities in property assessments. Faced with the prospect of considerably reduced revenues from the pending tax bills, the senate subcommittee appointed to draft a substitute measure chose to lower the amount of the state guarantee rather than to increase the minimum local levy. The bill thus drafted met with determined opposition.

After several days of acrimonious debate, a compromise bill was drafted and passed by both houses. Its essential features were: (1) State guarantees of $750 and $1,000 for elementary and high school teaching units, respectively, conditioned upon a 20-cent minimum local levy; (2) wealthy districts not qualifying for equalization aid to receive teacher and attendance quotas as under existing law with the latter fixed at 1.3 cents per day; (3) state school monies, if insufficient to finance the above program, to be prorated on a percentage basis among all districts; (4) when school fund permits, state equalization guarantees to be increased to $900 and $1,200 and the daily attendance apportionment to 2.9 cents per day; (5) state construction aid to consolidated districts as proposed by the Survey Commission; (6) a minimum school term of eight months; (7) state aid in the payment of transportation and high school tuition costs; (8) provision for closing schools with an

[1] The constitution of Missouri (Art. X, Secs. 3 and 4) requires taxes to be "uniform upon the same class of subjects," and that "all property subject to taxation shall be taxed in proportion to its value." The supreme court has never passed upon the constitutionality of a graduated income tax, but in upholding a flat rate tax on incomes the court, by a 4 to 3 decision, upheld the view that the term "property" as used in the constitution does not include "personal incomes, occupations, privileges, and similar sources of revenue." Ludlow-Saylor Wire Co. v. Wollbrinck (1918), 275 Mo. 339, 205 S. W. 196. In order to protect its program, the Survey Commission included an alternative flat rate of 2½ per cent to become effective if the graduated tax on personal incomes should be declared unconstitutional.

average attendance of less than 15; (9) county redistricting boards to plan larger school districts, subject to the approval of the voters in each district affected; and (10) the first apportionment under the new law to be made for the school year 1932–33.

This compromise measure, which it was estimated would require an increase in state expenditures of approximately $3,225,000 a year, was signed by Governor Caulfield after he was assured that no increase in the proportion of general revenues previously set aside for the state school fund would be necessary during the 1931–32 biennium.

THE BUILDING PROGRAM MUST WAIT

The proposed assumption by the state of the entire cost of public patient support in the state eleemosynary institutions, an important feature of the Survey Commission's tax relief program, was abandoned by legislative leaders as financially impossible. The general assembly appropriated approximately $2,800,000 for buildings and repairs at the several state institutions, and some appreciable increases were voted for salaries and maintenance, particularly in the educational institutions, but an overappropriation of $5,500,000 left Governor Caulfield with the difficult task of "making ends meet." A few emergency repair items were approved and among the items withheld, some of which may be released later in the biennium if revenue receipts permit, are a considerable number which provide for additional land, buildings, and equipment at state institutions.

SUMMARY OF ACCOMPLISHMENTS

A graduated tax on individual incomes is the major achievement of the Survey Commission. The additional revenues from this source and from the increased flat rate tax on corporate incomes probably will not exceed $1,000,000 during the biennium of 1931–32, but in future bienniums the increase, it is estimated, will total at least $10,000,000 with the possibility of several millions more as a result of improvements in administration and better business conditions. A second achievement, dependent on the first, is the plan for equalization aid to local school districts and the creation of county redistricting boards to initiate consolidations. Thirdly, $2,000,000 or more, it is expected, will be available each year beginning in 1933 for capital outlays and increased maintenance at state institutions. A modicum of tax relief was secured only by lowering the proposed minimum standard of education and by deferring the institutional building program. Emergency housing needs at the penal and eleemosynary institutions, for the most part, cannot be met during this biennium. The effect of the school aid law upon local support and the formation of larger districts is a moot question. The commission's recommendation for further study of taxation and tax administration went unheeded. It remains for future commissions and legislatures in Missouri to conduct inquiries and enact laws which will insure greater efficiency and economy in the expenditure of state funds, to the end that tax increases may not have been in vain.

Appraising Municipal Reports

FIFTH annual appraisal notes improvement in municipal reports

BY CLARENCE E. RIDLEY — *The University of Chicago*

DURING 1931 fourteen cities in the United States issued reports worthy of a review in these columns. There doubtless may have been others, but if so they did not come to the attention of either the REVIEW or the writer. These reports, which are appraised in this article, were reviewed in the following issues:

August—Alameda, California; Atchison, Kansas; Auburn, Maine; Cincinnati, Ohio; Fort Worth, Texas; and Oregon City, Oregon.

November—Austin, Texas; Two Rivers, Wisconsin; and Wichita, Kansas.

December—Berkeley, California; East Cleveland, Ohio; Kenosha, Wisconsin; Oklahoma City, Oklahoma; and Staunton, Virginia.

BASES OF THE APPRAISAL

The twenty criteria upon which the appraisal is based are as follows:

I. Date of Publication

1. *Promptness.*—The report will have little value unless published soon after the end of the period covered—six weeks as a maximum.

II. Physical Make-Up

2. *Size.*—Convenient for reading and filing, preferably 6″ x 9″.

3. *Paper and type.*—Paper should be of such a grade and the type of such size and character as to be easily read.

4. *Important facts.*—The more important facts should be emphasized by change of type or by artistic presentation.

5. *Attractiveness.*—The cover, title, introduction, and general appearance should aim to attract the reader and encourage further examination.

III. Content

A. *Illustrative Material*

6. *Diagrams and charts.*—Certain established rules should be followed to insure an accurate and effective presentation.

7. *Maps and pictures.*—A few well-chosen maps to indicate certain improvements, and a liberal supply of pictures, pertinent to the report, should be included.

8. *Distribution.*—Great care should be exercised in placing the illustrative material contiguous to the relevant reading material.

B. *Composition*

9. *Table of contents.*—A short table of contents in the front of the report is a great aid for ready reference.

10. *Organization chart.*—An organization chart or table indicating the services rendered by each unit, if placed in the front of the report, will

I. Table of Comparative Ratings of Municipal Reports

Explanation.—The number "5" denotes approach to an acceptable standard, while "0" indicates the value on that particular criterion to be practically negligible. Intervening numbers denote the degree of variation between these two extremes. A total of 100 would indicate a perfect score.

Criteria	Alameda, California	Atchison, Kansas	Auburn, Maine	Austin, Texas	Berkeley, California	Cincinnati, Ohio	East Cleveland, Ohio	Fort Worth, Texas	Kenosha, Wisconsin	Oklahoma City, Oklahoma	Oregon City, Oregon	Staunton, Virginia	Two Rivers, Wisconsin	Wichita, Kansas
I. Date of publication														
1. Promptness.....	0	3	2	4	2	4	2	3	0	3	3	5	4	3
II. Physical Make-up														
2. Size.....	5	5	5	4	5	5	5	5	5	5	5	5	5	5
3. Paper and type..	5	5	4	5	5	5	5	5	5	5	5	5	4	5
4. Important facts..	2	1	1	2	5	3	2	2	2	2	1	2	2	2
5. Attractiveness ..	5	4	3	5	5	5	5	5	5	4	3	5	4	4
III. Content														
A. Illustrative Material														
6. Diagrams and charts.....	4	2	2	3	4	5	4	3	4	4	1	4	3	0
7. Maps and pictures	5	3	2	4	4	5	5	4	5	1	1	4	4	4
8. Distribution	5	4	2	5	5	5	5	5	5	4	2	5	5	5
B. Composition														
9. Table of Contents	5	0	5	5	5	5	5	5	0	4	5	5	5	0
10. Organization chart	5	0	0	5	5	5	5	5	5	5	5	5	5	5
11. Letter of transmittal.....	5	2	4	4	5	4	5	3	4	5	2	5	3	0
12. Recommendations and accomplishments	5	3	4	4	5	4	5	4	5	5	2	5	5	4
13. Length.....	3	5	4	3	3	2	5	5	2	3	4	4	4	4
14. Literary Style...	5	5	5	5	5	5	5	5	5	5	5	5	5	5
15. Arrangement....	5	4	5	4	5	5	5	3	5	5	4	5	4	5
16. Balanced content	5	4	4	4	5	5	5	3	4	5	4	5	5	5
17. Statistics.....	4	4	4	4	4	4	4	4	4	4	4	4	5	4
18. Comparative data	3	4	4	3	4	4	5	3	5	5	4	5	5	3
19. Financial statements.....	4	4	4	4	4	4	4	4	4	4	4	4	4	4
20. Propaganda.....	5	5	5	5	5	5	5	5	5	5	5	5	5	5
Totals	85	67	69	82	90	89	91	81	79	83	69	92	86	72

help the reader to a clearer understanding of what follows.

11. *Letter of transmittal.*—A short letter of transmittal which either contains or is followed by a summary of outstanding accomplishments and recommendations for the future should open the report.

12. *Recommendations and accomplishments.*—A comparison of past recommendations with the progress toward their execution will serve as an index to the year's achievements.

13. *Length.*—Fifty pages should be the maximum length.

14. *Literary style.*—The text should be clear and concise, reflecting proper attention to grammar, sentence structure, and diction.

15. *Arrangement.*—The report of the various governmental units should correlate with the organization structure, or follow some other logical arrangement.

16. *Balanced content.*—The material should show a complete picture, and

each activity should occupy space in proportion to its relative importance.

17. *Statistics.*—Certain statistics must be included but, wherever appropriate, they should be supplemented by simple diagrams or charts.

18. *Comparative data.*—The present year's accomplishments should be compared with those of previous years, but only with full consideration of all factors involved.

19. *Financial statements.*—Three or four financial statements should be included, showing amount expended and the means of financing each function and organization unit.

20. *Propaganda.*—It is unethical and in poor taste to include material for departmental or personal aggrandizement. Photographs of officials, especially of administrators, seem out of place in a public report.

The application of these criteria to the reports is shown in Table I.

COMPARISON WITH APPRAISALS OF PREVIOUS YEARS

As this is the fifth appraisal of municipal reports in as many consecutive years it is interesting to note the gradual improvement in the reports for the same cities over the course of a few years.

TABLE II

	1928	1929	1930	1931
Austin, Texas	54	65	81	82
Cincinnati, Ohio	83	87	89	89
East Cleveland, Ohio	..	79	86	91
Fort Worth, Texas	67	73	81	81
Kenosha, Wisconsin	79	68	79	79
Roanoke, Virginia	62	66	74	..
Staunton, Virginia	76	89	90	92
Two Rivers, Wisconsin	65	78	84	86
Average rating	69	76	83	86

Promptness. The average length of elapsed time between the end of the period covered and the date the reports were available for all reports is as follows: 1927—4.5 months; 1928—3.7 months; 1929—4.7 months; 1930—4.1 months; and 1931—3.7 months.

Physical Make-Up. The format, attractiveness, and general make-up of the fourteen reports in 1931 are about equal to the very high standard established in 1930 but the failure to emphasize important facts throughout the text brings the average for this item below that of the previous two years. The rating this year is 81 per cent for all the reports while the corresponding figures for previous years were: 1927—78; 1928—78; 1929—82; and for 1930—86.

Illustrative Material. The quality and amount of illustrative material was about the same as the previous year as is indicated by the following: 1927—62; 1928—58; 1929—65; 1930—74; and 1931—74.

Composition. The marked improvement in the composition of the reports each year during the five-year period is most encouraging. In 1927 the rating was 64 per cent of perfection as compared with 66 in 1928; 72 in 1929; 79 in 1930; and 85 in 1931. The trend toward a shorter report received a slight set-back, however, for the average length for the past year was 72 pages as compared with 60 in 1930; 90 in 1929; 78 in 1928; and 90 in 1927.

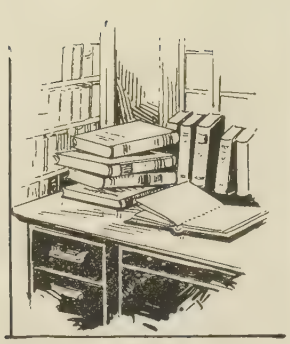
CONCLUSION

During the past five years seventy-nine reports, representing forty different municipalities, have been reviewed in these columns. The question therefore might very well be raised as to, (1) whether the interest in public reporting by means of the annual municipal report is broadening, and (2) whether the quality of the annual report is improving. It is doubtful as to the former but unquestionably the quality of municipal reports is on the

upgrade. This trend is indicated by the figures in Table II and further evidence is available from the following average ratings of all reports reviewed by years: 1927—65; 1928—66; 1929—72; 1930—78; and 1931—81.

Creditable as this showing is there is still much to be desired. For example, report writers still are giving too little concern to the readers as evidenced by the unreasonable length of most reports, and of equal importance is the almost universal failure of report writers to emphasize in some way the more significant statements in a page of text. Then, too, report writers are not paying sufficient attention to the development of uniformity in the reporting of like activities. They can be excused in part for this, however, for it has been only within the last year or two that any such standardized units of reporting municipal activities have been available. Of special value in this connection is the report of the National Committee on Municipal Reporting which was issued early in 1931. The writer intends to revise his criteria for 1932 with a view of placing more weight on comparative statistics and uniformity of reporting in view of the importance of such information.

It may be too obvious to mention that the annual municipal report is by no means adequate to fulfill the entire function of reporting but this does not detract from its importance and with more and more uniformity possible in the reporting of similar activities there should be a renewed interest in the annual report by the taxpayer who after all is the one we should be striving to reach in our report writing.



RECENT BOOKS REVIEWED

Cost of Government in the United States, 1928–1929. By the National Industrial Conference Board, Inc., New York, 1931. 159 pp.

This volume is the eighth in the series of annual reports prepared by the National Industrial Conference Board on the cost of government in the United States. The report in the form of tables, charts, and brief descriptive analyses treats in successive chapters the subjects of governmental expenditures, public indebtedness, tax collections, sources of tax revenue, and highway finance. This is a useful document, in that it brings together from scattered sources significant detailed factual information on federal, state and local governmental expenditures. The trend of governmental expenditures and the relation of these expenditures to the national income as revealed in the report should be of interest to citizens and students alike.

Martin L. Faust.

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Zoning. By C. William Brooks, Jr. Baltimore: *The Daily Record*, August 13, 1931, pp. 2 and 3.

Baltimore has had a checkered history in its zoning. Out of its defeats and victories has come a body of legal experience well summarized for general application by Mr. Brooks of the University of Baltimore in this article. After rehearsing much ground familiar to the technical reader, he shows just how such details as the Baltimore Zoning Commission's elaborate series of seventy-five special study maps were effectively used in defending the zone plan. His discussion of controlling cases elsewhere also brings out sharply their significance to the zoning cause.

Arthur C. Comey.

Criminal Justice in England. By Pendleton Howard. New York: The Macmillan Company, 1931. 436 pp. $3.00.

This book "is a study in law administration . . . it is concerned almost wholly with the management of prosecutions and the conduct of criminal cases in the courts. . . ." The author's study was conducted under the auspices of the Council for Research in the Social Sciences of Columbia University. Emphasis on the machinery for prosecution derives from the discovery in this country that the prosecutor is the most important single factor in criminal law administration. We learn from it that, while private prosecution is not likely soon to be abandoned, there has been a marked development of public prosecution, without which private prosecution would have become quite inadequate. Through the home secretary, the attorney general, the solicitor general and the director of public prosecutions the government keeps a firm hold on prosecutions in serious cases. In the field of minor delinquency the police, occasionally assisted by experts, constitute the prosecuting force.

The most striking difference between English law administration and ours lies in the fact that England possesses a body of over 25,000 accredited citizens, men and women of character and judgment, who serve as magistrates without pay as a matter of political duty and social distinction. The great success of the justices' courts and other inferior tribunals has led in recent times to the enlargement of jurisdiction until now they finally dispose of about nine-tenths of all indictable offenses, as well as all non-indictable, and without the aid of the jury.

The reader is entitled to conclude that the prosecutor owes his ascendency in our system to

the ignorance of the police, the perversion of jury trial, the flabbiness of the judicial structure and especially the partisanship and low intelligence of inferior magistrates. Constitutional guaranties notwithstanding, jury trial becomes less and less a factor, especially in ten states which permit a respondent to waive trial by jury. We shall adhere to public prosecutions. Our need, then, is to organize the officials who exercise this transcendant power, so that they shall become a body of trained experts, as remote as possible from partisan and local influence, and responsible to the state. In doing this the English example is not very serviceable. We must hope that in some venturesome state a great experiment will be made. There is no danger of losing any value. This is not said, however, in derogation of this study of the English system, which is thorough, interesting and very well written.

HERBERT HARLEY.

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IDENTIFICATION AND ANALYSIS OF ATTRIBUTE-CLUSTER-BLOCS. By Herman C. Beyle. University of Chicago Press, 1931. xiv, 249 pp. $3.00.

Professor Beyle's book is essentially a research report which is unique in that it stresses a technique of investigation rather than the results obtained. Credit is assigned to Stuart A. Rice for originating the technique, but the author leaves no doubt that through persistent research he has refined it to yield analyses of data available within the domain of social science and particularly in several fields of governance. Since only the last of the four chapters comprising the main body of the book deals with issues of general import to students of government, it appears that the volume as a whole is addressed to research workers.

The technique described is one which aims to identify within any group those individuals who form cohering blocs, or those persons who possess common attributes, and in addition it seeks to identify and analyse the combinations of traits, or characteristics, which underlie the cohesion of blocs. Step by step the technique is unfolded. From storage tables which depict, for example, the original categories of "aye" "nay" or "non-vote" and which afford a basis for pairing legislators in agreement upon a series of roll calls, one passes successively to indices of the significant cohesion of pairs, of prevalence, and of prominence. Graphic work sheets and tables lend aid in revealing principal blocs, each with its nucleus, and inner and outer fringes of adherents; such illustrations also give body to necessarily involved and lengthy descriptions. Having unfolded the technique, the author then demonstrates its application to sixteen selected roll calls taken during the 1927 session of the Minnesota Senate and contrasts the findings with those obtained from the same legislative body by the method of personal interviews and general observation. Undoubtedly the attribute-cluster-bloc technique does yield a richer delineation.

Professor Beyle has presented his co-workers with a method for defining and analysing attributes held in common by two or more, but not all, members of a group, and it appears that the technique is applicable particularly to opposed qualitative categories. It is not inapplicable to attributes quantitatively defined, but the single example offered by the writer leaves much to be desired; certainly there are more refined methods for reducing scores to a common basis than the one used in illustration. But only additional research can prove the general value of the technique suggested, and such research the author seeks to encourage by enumerating many problems falling within the confines of psychology, sociology, and especially of political science.

CHARLES BIRD.

University of Minnesota.

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BATTLING THE CRIME WAVE. By Harry Elmer Barnes. Boston: The Stratford Company, 1931. 248 pp. $2.00.

In this book, Professor Barnes has produced a stimulating and dramatic presentation of the new criminology and penology for popular consumption. No lay reader could go through the book without a new appreciation of the need for a complete overhauling of our methods of dealing with crime, its prevention and punishment.

Growing out of two years of writing on this subject, among others, for the Scripps-Howard Newspapers, the book is written in a rapid-flowing journalistic style that makes it possible to read it without effort at a sitting.

The author lays down the essentials for a scientific approach to the crime problem, and brings out facts little realized until the recent reports of the Wickersham Commission made the condition of our jails front page stories: that for brute handling of criminals, medieval dungeons and torture chambers have little to show us.

HOWARD P. JONES.

REPORTS AND PAMPHLETS RECEIVED

EDITED BY EDNA TRULL

Municipal Administration Service

Governmental Organization within Greater New York.—Hubert Stone. Institute of Public Administration, New York, 1931. 18 pp. and chart. For this third edition of the pamphlet describing New York City government, Mr. Stone has revised both the text and the all-important chart in accordance with the changes in city government since the 1928 edition. Thus in addition to changes in salaries and number of employees, new departments such as those of sanitation, hospitals and city planning have been added. Furthermore, the chart has been rearranged so that it conforms more closely to the organization of the accompanying text material. This description of the organization of city, county and borough governments within New York is of inestimable aid in understanding that complex situation. (Apply to the Institute of Public Administration, 261 Broadway, New York City. Price 35 cents.)

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Municipal and County Financial Administration.—Report No. 3 of the New Jersey Commission to Investigate County and Municipal Taxation and Expenditures, 1931. 128 pp. The Commission, whose director is Dr. Harley L. Lutz and whose chief of staff is Mr. Hugh J. Reber, of Griffenhagen and Associates, has thoroughly studied the various aspects of municipal finance and has made recommendations to remedy the existing defects, particularly as to measures of expenditure control. Besides summaries of findings and recommendations, the report includes a discussion of public expenditures, budgeting revenues, special assessment, general accounts, financial officers, auditing and the collection and custody of funds. (Apply to Commission to Investigate County and Municipal Taxation and Expenditures, Trenton, New Jersey.)

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Local Fire Protection Services and Costs.—Commission to Investigate County and Municipal Taxation and Expenditures, Report No. 4, Trenton, 1931. 97 pp. On the basis of reported fire protection expenditures in municipalities of New Jersey and other states and in comparison with the standards set up by the National Board of Fire Underwriters, the commission concludes that New Jersey municipalities are unreasonably extravagant. The recommendations for decreasing this phase of governmental cost, as well as for decreasing insurance premiums by securing better ratings from the underwriters are specific. Consistent with the commission's earlier reports, state participation is again recommended, with responsibility for training of firemen, the promulgation of state codes on building and fire prevention, and a fire prevention commission, with a technically qualified fire prevention engineer as chairman, to enforce these codes. Marked economy might also be effected through district or county organization of fire departments with formal coöperation across boundary lines serving as a possible substitute for district centralization. Recommendations for local improvement concern fire fighting, fire prevention methods and personnel, with particular emphasis on basic improvement in practice, rather than added per capita expenditure. In the absence of thorough state or local codes, those of the National Board of Fire Underwriters should be recognized. An interesting suggestion is made that the cost of fire protection should be met by general taxation only in part, the major burden being borne by the property needing most protection. The value of the report as a basis for the consideration of the cost of fire protection is not limited to New Jersey municipalities. (Apply to the Commission to Investigate County and Municipal Taxation and Expenditures, Trenton, New Jersey.)

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Municipal Problems in the Economic Depression.—International City Managers' Association, Chicago, 1931. 91 pp. Among the important subjects considered at the annual conference of the International City Managers' Association last October were unemployment relief and reducing expenditures to meet diminishing income. This publication is the result of the desire on the part of those present for immediate distribution of the report on this session. Important aspects of the subject are treated by authorities who discuss general trends and theory as well as practical administrative efforts. A useful addition to the conference proceedings on these subjects is the descriptive list of organiza-

tions and services available to municipalities on relief work and a selected bibliography on unemployment relief. (Apply to International City Managers' Association, 923 East 60th Street, Chicago, Illinois.)

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The Michigan Plan—An Equitable Proposal for the Reapportionment of the Michigan State Legislature.—Detroit, Michigan, 1931. 123 pp. In view of the indisposition of the state legislature toward the needed reapportionment, the supervisors of Wayne County appointed a committee to study reapportionment for the purpose of framing an amendment to be offered through the initiative power. This published report of the committee of which Benjamin B. Pelham is secretary analyzes the constitutional provisions on legislative structure and apportionment in various states and recommends for Michigan a bi-cameral legislature. The upper house, based on present senatorial districts, is to be elected for four years with half of the terms ending each two years. The lower house would be apportioned on a strictly population basis with a two-year term. In counties entitled to 10 or more members, the board of supervisors might arrange the districts and in cities in counties over 100,000 population one-half the representatives might be elected at large. The proposed amendment also provides for reapportionment immediately after the publication of the decennial federal census, with the added provision that the secretary of state may be compelled to act by court order. (Apply to the Board of Supervisors, County of Wayne, Michigan.)

⚜

The Challenge of the Gasoline Filling Station.—Paul A. Bankson. New Rochelle, 1931. 14 pp. illustrated. As city plan engineer of New Rochelle, New York, Mr. Bankson has carefully observed the construction of gasoline stations there and has used other cities and villages, especially in Westchester County, as a basis for further study. He discusses the responsibility of the boards of zoning appeals, locations, appearance, and gives specific recommendations for making gasoline stations conform to his own high standards. (Apply to Paul A. Bankson, City Hall, New Rochelle, New York.)

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Municipal Courts in Michigan.—W. Rolland Maddox. Michigan Municipal League, 1931. 41 pp. The inadequacy of the old justice of the peace court system and the fact that probably 80 per cent of the judicial business in Michigan is transacted in courts of this type of jurisdiction made a study of the situation important. The Michigan Municipal League undertook to examine the power of cities, features of organization, finance and other questions in connection with the local courts which have broken away from the old statutory fee-paid justice system. On the basis of charter and statutory provisions, replies to requests for data and personal visits, Mr. Maddox has been able to call attention to desirable steps in the betterment of local courts. (Apply to Michigan Municipal League, Ann Arbor, Michigan.)

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The Sale of Municipal Bonds and a Model Municipal Debt Statute.—Robert J. Patterson. Bureau of Municipal Research of Philadelphia, 1931. 36 pp. These important subjects were treated by Mr. Patterson, the chief accountant of the Philadelphia Bureau of Research at national conferences last year, and the addresses are reprinted from the proceedings. The thorough discussions include the city's credit ratings, types of bonds, advertising and sales problems and frequency of bond issues. Under the Model Municipal Debt Statute are the reasons for a statute, the necessity of sound budgetary practices, validity of bonds and other features. Such timely and authoritative publications are extremely valuable. (Apply to Bureau of Municipal Research of Philadelphia, 311 South Juniper Street.)

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Survey of Health Problems and Facilities in Memphis and Shelby County, Tennessee.—W. F. Walker and Dorothy F. Holland. Memphis, 1931. 141 pp. The Committee on Administrative Practice of the American Public Health Association carried on this survey in the winter of 1929–1930. For its distribution in 1931 the Shelby County Tuberculosis Society is responsible. The usual descriptive material is included, with ratings and recommendations. Interesting sections are given to show progress made in the period between the submission of the report and its printing. Particular note is due the fact that the Memphis health program is financed very largely from public rather than private sources. Emphasis is placed on need for developing tuberculosis work. (Apply to Shelby County Tuberculosis Society, Memphis, Tennessee.)

JUDICIAL DECISIONS

EDITED BY C. W. TOOKE, *Professor of Law, New York University*

Disposition of Cases Earlier Noted.—POLICE POWER—DISPOSITION AND REVIEW OF CASES BEFORE THE SUPREME COURT OF THE UNITED STATES.—Referring to the cases on the calendar of the Supreme Court, which were noted in the REVIEW of November, 1931, at page 662, final disposition has been made in three of these cases and oral argument concluded in the other. The Court denied the petitions for writs of certiorari in *Marblehead Land Company* v. *City of Los Angeles*, 52 Sup. Ct. Rep. 18 [Adv.], 76 L. ed. 23 [Adv.], and in *Schick* v. *City of New Orleans*, 52 Sup. Ct. Rep. 34 [Adv.], 76 L. ed. 43 [Adv.]. In *Walnut & Quince Streets Corporation* v. *Mills*, 52 Sup. Ct. Rep. 16 [Adv.], 76 L. ed. 19 [Adv.], the Court dismissed the appeal for want of a substantial federal question. The appeal in *Hodge Drive-It-Yourself Company* v. *City of Cincinnati* was argued on November 30, 1931. After counsel for the appellant company had presented his case, the Court declined to hear further argument, which would seem to indicate that the appeal will be dismissed.

The Court for want of jurisdiction, dismissed an appeal taken from a decision of the Court of Civil Appeals (Fourth Supreme Judicial District) of Texas which held that a school board may segregate school children of Spanish and Mexican descent in a separate building apart from children of Anglo-Saxon parentage (*Salvatierra* v. *Independent School District*, 52 Sup. Ct. Rep. 28 [Adv.], 76 L. ed. 35 [Adv.]).

In regard to the case of *State of New Jersey* v. *City of New York*, 283 U. S. 473, noted at page 541 of the REVIEW of September, 1931, the Court on December 7, entered a decree enjoining the city of New York from dumping any garbage or refuse into the ocean off the coast of New Jersey on and after June 1, 1933. The Court in confirming the report of the master appointed to take testimony, also made certain other recommendations in order that a minimum of refuse should be deposited into the sea in the meanwhile.

The case of *New State Ice Co.* v. *Liebmann*, 42 Fed. (2d) 913 (reviewed in the issue of May, 1931, page 297) in which the district court declared invalid a statute of Oklahoma providing that the manufacture and sale of ice was a public business and subjecting the sale of the same to license fees, was placed on the calendar of the Court as No. 463.

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Funeral Homes and Restricted Districts.—POLICE POWER—EXCLUSION OF MORTUARIES FROM RESTRICTED DISTRICTS.—The question of the power of prescribing districts from which mortuaries may be excluded continues to crop up in various states. The latest decision on this point is *State ex rel. Stephens* v. *Jacksonville*, 137 So. 149, in which the Supreme Court of Florida held that, while under the general zoning powers conferred upon it the city may exclude such establishments from restricted districts, the ordinance in question was invalid because the city officials had failed to comply with the provisions of the statute requiring the formulation of a comprehensive city plan by the local commission, to be advertised and open to public hearings before being acted upon by the mayor and city council. The court had previously held in *State* v. *Miami*, 134 So. 541 that under its general zoning powers the city could exclude such establishment from certain prescribed districts, basing

its decision largely upon the case of *Tucson* v. *Arizona Mortuary*, 34 Ariz. 495, 272 Pac. 923.

In *Weinmann* v. *Miles*, 4 Pac. (2d) 437, the Supreme Court of Kansas upheld the granting of an injunction in an action brought by neighboring owners to enjoin the erection of a funeral home upon the finding of fact by the lower court that its maintenance would seriously impair the value of the adjacent property and would amount to a nuisance in fact.[1] Such remedy is always available at common law to abate any nuisance in fact, even when arising in connection with the operation of a legitimate business.

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Lapse of Right to Non-Conforming Use.—ZONING—LOSS OF RIGHT TO NON-CONFORMING USE.—In *Town of Darien* v. *Webb*,[2] decided November 25, 1931, the Superior Court, Fairfield County, Connecticut, holds that by the abandonment of a non-conforming use for some fifteen months the owner of the premises loses the protection accorded him by the general zoning ordinance to a continuance of the former use, and that the town is entitled to an injunction against the resumption thereof. In the instant case, the property had been used for commercial purposes, but for some fifteen months was converted by the owner into a residence. The court bases its decision upon the principle set down in *Lathrop* v. *Northrop*, 111 Conn. 616, 151 Atl. 183, to the effect that while the continuance of a non-conforming use will be protected under the zoning laws, the purpose of the statute is to reduce all uses to conformity as soon as possible. Where the local ordinance makes the loss of the right to continue dependent upon an uninterrupted abandonment for the term of one year, the Connecticut courts have held that without a clear finding of disuse for that length of time, the right of the owner to such use is not lost (*Comstock* v. *New Britain*, 112 Conn. 25, 151 Atl. 335). The extent to which some courts have gone in strictly limiting the owner's right to a continuance in the same manner as formerly may be seen by reference to *Town of Lexington* v. *Bean* (Mass.) 172 N. E. 867, reported in the December, 1930, issue of this REVIEW.

The remedy by injunction to enforce compliance with zoning ordinances has been upheld in Connecticut not only at the suit of the public authorities but also of any person whose property would be injured by non-compliance with the statute (*Fitzgerald* v. *Menard Holding Co.*, 106 Conn. 475, 138 Atl. 483, 54 A. L. R. 361). In the recent case of *Greenwich Gas Co.* v. *Tuthill*, 113 Conn. 684, 155 Atl. 850, the Supreme Court of Errors held that property owners so interested may intervene as parties defendants in an action brought against the zoning board of appeals after refusal of a permit.

⚜

Control of Subdivisions.—CITY PLANNING—CONDITIONS IMPOSED UPON RECORDING OF SUBDIVISION MAPS.—The important question of the extent of the power of a municipality to impose conditions upon the owners of subdivisions in recording plats was before the Supreme Court of New York, Westchester County, in *Re Lake Secor Development Co., Inc.*, 252 N. Y. S. 809. Under the New York statutes, planning boards of towns and villages are given the power to make reasonable requirements regarding streets, highways and parks in a new subdivision as a condition to the privilege of dedicating the same to the public and of filing the subdivision map. This power was fully sustained in *Village of Lynbrook* v. *Cadoo*, 252 N. Y. 308, 169 N. E. 394, reported in the April, 1930, issue of the REVIEW.

In the instant case the town planning board made the additional requirement that a water system be installed as a condition of approval of the map, relying upon the words of the statute which says that "the land shown on such plats shall be of such a character that it can be used for building purposes without danger to health." The court holds that this clause is not broad enough to justify the condition the local planning board sought to impose.

It is well recognized that some curb should be put upon subdivision owners that will obviate the possible liability of municipalities upon special assessment bonds for water and sewer purposes upon a later default of the owners of the property benefited. That such requirements may be imposed, where a statute gives the municipality the requisite authority, has been settled in Michigan in the case of *Allen* v. *Stockwell*, 210 Mich. 488, 178 N. W. 27. Statutory amendments conferring such power on municipal planning boards would go a long way toward obviating the financial embarrassment that now faces so many of our municipalities, which have had to default on special improvement bonds

[1] See in accord: Higgins v. Black, 213 Ala. 209, 104 So. 429; Tureman v. Kitterlin, 304 Mo. 221, 263 S. W. 202.

[2] We are indebted to C. B. Dana, chairman of the Darien Planning and Zoning Commission, for the advance opinion in this case.

issued to assist in the development of outlying districts.

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Extraterritorial Land Condemnation.—EMINENT DOMAIN — CONDEMNATION OF EXTRA-MURAL LANDS FOR COLORED BATHING BEACH UPHELD.—In *Page* v. *Commonwealth ex rel. City of Norfolk*, 160 S. E. 33, the Supreme Court of Appeals of Virginia upholds the decision of the State Corporation Commission giving the city permission to condemn for a bathing beach for colored people property situated some two miles distant from the city boundaries. Full statutory authority existed to condemn extra-mural property for park purposes, but under the Virginia law condemnation of property belonging to a public utility corporation is subject to the approval of the state commission, to which the statute delegates the power to decide whether the retention of the property is necessary to carry out the public purposes to which the utility is devoted. In the instant case the owner and lessee, both railroad companies, consented to the condemnation. The plaintiff Page and other nearby property owners were given permission to intervene and prosecuted the appeal from the decision of the commission. The court holds that, whether as owners of adjoining property or as resident taxpayers of the city, the interest of the intervenors is too indirect and remote to include them within the "parties in interest" authorized to prosecute the appeal. The question of damages to their property must be raised elsewhere in an appropriate proceeding.

In its opinion the court calls attention to the state policy of segregation of the races and to the fact that public beaches have been set aside for the white population, and that the site selected, while in a sparsely settled section, is easily accessible for the large colored population of the city. Under the circumstances, the decision of the city council that the land is required for park purposes is approved, the court refusing to interfere with the conclusion of the city authorities and of the state commission.

✻

Independent Powers of School Boards Curbed in Wisconsin.—THE SCHOOL DISTRICT AS A DEPARTMENT OF THE CITY GOVERNMENT.—The status of school districts in cities of the second class was before the Supreme Court of Wisconsin in *State* v. *Racine*, 236 N. W. 553 and *Board of Education* v. *Racine*, 238 N. W. 413. In the former case, the board of education sought to compel the city council to authorize an issue of bonds for the erection of a new high school building. In deciding that the board could not maintain its action, the court defined the status of the school district as a mere department and the board in executing the duties imposed upon it as only an arm of the city government. All moneys collected for school taxes or from the sale of school property is subject to the control of the city council. In the latter case, the court holds that the interest on funds thus collected for school purposes goes into the general treasury of the city.

It appears that in the past no uniform system of school organization existed in Wisconsin, a state in which the courts lay peculiar stress upon the constitutional requirements of uniformity in municipal government (*In re Christoph*, 231 N. W. 134). Special city charters had specified various forms and methods for the administration of educational affairs. In Milwaukee, for example, the board of education was given the authority to fix the amount that should be raised by taxation for school purposes. But in *State* v. *Milwaukee*, 189 Wis. 84, 206 N. W. 210, the supreme court decided that the organization and administration of school matters was not a local affair within the scope of constitutional home rule powers. The subsequent legislation has been aimed at producing a more uniform organization in order to carry out a more consistent state policy. The construction now given to the statutes passed in 1929 indicates that the supreme court finds that the intent of the legislature is to avoid the setting up of independent school districts as state agencies and as far as practicable to leave the administration of school affairs to the local city governments.

✻

Strict Construction of Borrowing Powers.—IMPLIED POWERS—ISSUANCE OF NEGOTIABLE BONDS.—One of the most important recent decisions upon the question whether municipal corporations have the power to issue negotiable securities as incidental to the power to incur indebtedness, and whether, where such authority is given by statute, the securities must conform to the statutory requirements, was recently decided by the Supreme Court of Nebraska in *State ex rel. City of O'Neill* v. *Marsh*, 238 N. W. 760. The action was in mandamus to compel the state auditor to register some $7,000 of bonds issued by the city for the purchase of fire fighting

equipment. Earlier decisions in Nebraska [1] had held that the power to issue bonds might be implied from the general power to incur indebtedness. But by section 17–441, Compiled Statutes, 1929, cities of the class to which the relator belongs were expressly given power to purchase fire extinguishing apparatus by the issuance of bonds within certain limits, upon vote of three-fifths of the electors at an election duly advertised, such bonds to be known as "water bonds" to run for twenty years with option of redemption after five years and to bear interest not to exceed six per cent. The court holds that the statute authorizing bonds to be thus issued negatives any finding of an implied power to issue bonds for any of the purposes mentioned in any other way.

From an early day the decisions upon the implied power of municipal corporations to issue negotiable securities where power to incur a debt is given have been conflicting in the various states.[2] Judge Dillon in *Gause* v. *Clarksville*, (1879) 5 Dill. 165, and in his treatise sponsored the view of strict construction, and the majority of the states now hold that the power to issue negotiable securities must be expressly conferred. The Supreme Court, however, has so far modified its position in this respect as to hold that an express power to issue bonds or certificates of indebtedness carries with it the implied power to make them negotiable (*Denver County Commissioners* v. *Home Savings Bank*, 236 U. S. 101). But the principle applied in the instant case that where the power is conferred statutory requirements as to the method of its exercise are limitations upon the power and must be strictly followed is universally accepted. The decision of the court therefore is consistent with its previous adjudications and would not seem to indicate that it will modify its rule of liberal construction in this respect, except so far as the above principle is applicable.

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Conditional Sales and Debt Restrictions.—PURCHASE OF UTILITY EQUIPMENT—CONDITIONAL SALES CONTRACTS.—A notable decision by the California District Court of Appeal, First District, Division 2, *Garrett* v. *Swanton*, 3 Pac. (2d) 1025, sustains a contract made by the city of Santa Cruz for the construction of a water plant and power house to be paid for in five annual installments solely from the revenue to be derived, title to remain in the vendors until payment of the final installment. The principal contention of the plaintiffs was that the sum total of the contract prices became an immediate obligation of the city, but the court held that under the contract the city assumed no obligation that would be payable from direct or indirect taxation and, therefore, the obligation did not come within the purview of the constitutional limitation upon the city's indebtedness.

It was further contended that the effect of the contract was to mortgage the water property and to hypothecate the revenue therefrom, which the charter forbids to be done except by vote of the people. To this contention the court answered that the ordinance of the city provides that the revenue of the water department may be used for the construction, improvement and extension of the system, and that the obligation to devote part of this fund to payment for the new equipment does not amount to a hypothecation of the same. It may be noted that no other questions of the power of the city to contract for the water equipment was involved and that the requirement as to competitive bidding had been fully complied with.

The Supreme Court of Georgia comes to a different conclusion in *Morton* v. *City of Waycross*, 160 S. E. 330. This was a taxpayer's action to enjoin the city from entering into a proposed contract with the Georgia Power and Light Company for a supply of electrical power for a period of five years and for electrical pumping equipment of an agreed value of $9,000. The city was to pay for the equipment by giving the company a monthly credit on its franchise tax of "fifty per cent of the saving effected by the operation with electric energy," calculated upon an estimated difference between the cost of pumping by steam power and the cost of pumping by electric power. In the meantime title was to be retained by the seller. Further, the city was to have the right upon ninety days' notice to cancel the agreement for service upon surrender of all moneys credited upon the purchase price, or upon payment in full for the equipment if it should elect to retain it.

The court holds that, although the title is to remain in the seller, the proposed contract is invalid as an attempt to evade the constitutional debt limitation and further because in violation of

[1] State v. Babcock, 22 Neb. 614, 35 N. W. 941; State v. Babcock, 25 Neb. 278, 41 N. W. 155.

[2] Compare Ketchum v. Buffalo (1856) 14 N. Y. 356 and Hackettstown v. Swackhamer (1874) 37 N. J. L. 191.

the statute requiring competitive bidding. The report of the case gives the text of the proposed contract in full and citations to other Georgia decisions involving similar questions.

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Suspension of Penal Ordinances During Litigation.—PENAL ORDINANCES—SUSPENSION OF OPERATION PENDING JUDICIAL DETERMINATION OF VALIDITY.—The Supreme Court of Kansas has had before it recently the important question of operation of penal ordinances enacted under the police power, pending the determination of litigation in which their validity is challenged. It is well settled that a police statute or ordinance relating to property rights may be adjudged invalid not only where no opportunity for judicial review is accorded but also where the penalties imposed are so large and unreasonable as practically to intimidate persons affected from litigating their rights (*Ex parte Young*, 209 U. S. 123; *Mo. Pac. Ry. Co.* v. *Tucker*, 230 U. S. 340). Especially is this true in a case in which the constitutionality of the act depends upon the determination of complicated facts by judicial inquiry. In such cases it is generally held that if the person aggrieved challenges the validity of the ordinance promptly and in good faith, a court of equity will grant an order restraining the enforcement of the penalty attached to the violation, at least until such time as the court may require to determine that issue.

After a court of competent jurisdiction has declared the ordinance to be valid and the restraining order has been vacated, the further question arises as to whether the city may proceed to collect the penalty for *ad interim* violations. In *City of Marysville* v. *Cities Service Oil Co.*, 3 Pac. (2d) 1060, the Supreme Court of Kansas answers this question in the negative and holds that the penalty clause imposed by the ordinance of 1923, requiring oil tanks to be placed below the surface, was suspended not only during the litigation prosecuted by the defendant, including the period for appeal after the trial court had adjudged the ordinance valid and vacated the injunction, but even thereafter pending determination of the same question in the federal courts in an action brought by other parties.[1] The position the court takes is that such must be the construction of the ordinance if it is to be held valid, that otherwise it would be unconstitutional as violating the due process guaranteed by the state and federal constitutions.

A similar question confronted the court in *Derby Oil Co.* v. *City of Oxford*, 4 Pac. (2d) 435, decided November 7, 1931, wherein the city had sought to enforce the penalties which would have accrued under an ordinance regulating the drilling for oil within the city limits.[2] In this case no injunction was sought by the defendant; but the plaintiff was found to have relied upon the promise of the mayor that, as other cases involving the validity of the ordinance were pending, it was not necessary for it to file a suit and that the city would not prosecute it for drilling while the matter was at issue before the courts. The penalty claimed covered some 2,000 counts with total fines of some $200,000 and the present suit was brought to enjoin the city from further prosecution of these claims. In reversing the judgment of the district court refusing the injunction, the supreme court holds that the company had a right to rely upon the promise of the mayor, acquiesced in by the city council, and that the city is now estopped to prosecute its action for the violations of the ordinance. Judge Harvey, concurring specially, bases his conclusion upon the fact that an injunction against the city's enforcement of the ordinance issued by the federal district court in the Marrs case may be invoked by the defendant as binding upon the city.

The majority of the court, however, as in the Marysville case, seem to take the position that the prosecution of an action to test the validity of such an ordinance will not only suspend *pendente lite* the enforcement of penalties for its infringement, but will preclude any action by the city thereafter to collect for any violation committed up to the time of final adjudication of the question by the court of last resort. The only precedents cited by the court for its extraordinary conclusion are cases holding that a court of equity may suspend the enforcement of penalties under similar ordinances until their validity is passed upon by a court of competent jurisdiction. If the doctrine of the instant cases is to be applied generally by the Kansas courts, the logical result will be to render ordinances, such

[1] Standard Oil Co. v. City of Marysville, 279 U. S. 429 (1928). The opinion by Mr. Justice Stone may be found printed in full in the July, 1929, issue of this REVIEW.

[2] The ordinance is fully set forth in Marrs v. City of Oxford, 24 Fed. (2d) 541, affirmed in 32 Fed. (2d) 134, 67 A. L. R. 1366, certiorari denied, 280 U. S. 573. The decision of the district court was reviewed in the June, 1928, issue of the REVIEW.

as in these cases were upheld by all the inferior courts and finally adjudicated valid by the highest court of the land, practically unenforceable until after the occasion for their enactment has expired. Such now appears to be the law of Kansas, but we doubt that the courts of any other state will ever go to this length in thus limiting the exercise of the police power by its municipalities.

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Recovery on Contractors' Bonds.—CONTRACTORS' BONDS—RECOVERY OF LABORERS AND MATERIALMEN ON PUBLIC BONDS.—In a recent decision by Supreme Court Justice Untermeyer, *Van Clief & Sons, Inc.* v. *City of New York*, 141 Misc. 216, 252 N. Y. S. 402, the court refused to extend the application of *Johnson Service Co.* v. *E. H. Morris, Inc.*, 253 N. Y. 417, 171 N. E. 692, reported in the November, 1930, number of the REVIEW, to allow a materialman to recover on a contractor's bond in the absence of the city joining in the prayer for relief. In each case, the action against the bonding company was brought in equity, making the city a party defendant, but in the Johnson case the city appeared and asked that the plaintiff be given equitable relief. The Court of Appeals in the latter case based its decision upon the equitable principle that although the plaintiff had no standing to recover at law as a third party beneficiary (*Fosmire* v. *National Surety Co.*, 229 N. Y. 44, 127 N. E. 472), nevertheless, the bond included an obligation to pay laborers and materialmen, which the city could enforce for their benefit. The instant case therefore raises a nice question of the extent to which the court intended to go in the Johnson case, a question which can be finally determined only by the Court of Appeals.

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Adoption of Legislative Charters.—APPROVAL OF ELECTORS AS PREREQUISITE TO THEIR OPERATION.—The Court of Errors and Appeals of New Jersey in *McCarthy et al.* v. *Walter, et al.*, 156 Atl. 772, declared unconstitutional the legislation abolishing the offices of boulevard commissioners and of park commissioners of Hudson County, upon the ground that the statutes in question violate the constitutional provision adopted in 1875 (Const., Art. IV, §7, par. 11) against special legislation "regulating the internal affairs of towns and counties; appointing local officers or commissions to regulate municipal affairs." The purpose of the acts in question (chs. 260, 261, 262, Public Laws of 1930) ostensibly was to consolidate the two commissions but in effect to abolish the existing offices and to place the appointments to the new offices in the hands of the governor of the state.

The decision in the case involved several other questions of importance which we hope to have reviewed in a later number, only one of which we have space to take up at this time. Upon the question of the adoption of the provisions of a statute creating a municipal corporation by the electors of the locality, as exemplified in the leading cases of *Patterson* v. *Society*, 24 N. J. L. 385, decided in 1854, and *Attorney General* v. *McGuinness*, 78 N. J. L. 346, 75 Atl. 455, the court holds that such a referendum may be made only to the people of the community concerned and that no other will may intervene between the act of the legislature and the operation of the statute. A provision in a statute that the submission of a new charter to the electors is subject to the approval of the governing body of the municipality is declared to be an unconstitutional delegation of the legislative power. The court proceeds to explain that similar provisions in the "Road Acts," have been sustained only because the exceptions were administrative in character and the procedure had an approved standing long before the constitutional amendment was adopted. Notwithstanding the cogency of the reasoning of the court, it may be noted that three of the judges dissented from the conclusion of the majority.[1]

[1] We are pleased to announce that Spaulding Frazer, Esq., editor of the legal department of *New Jersey Municipalities*, has consented to further discuss this important decision in our February number.

PUBLIC UTILITIES

EDITED BY JOHN BAUER — *Director, American Public Utilities Bureau*

Look at Seattle.—If you want to know what is possible of accomplishment under public ownership and operation of electric systems, you must not overlook Seattle.

The enterprise was started at the beginning of the century. It was successful from the beginning, and has moved steadily forward, with plant extension, service improvements, and reductions in costs to the consumers. Its financial record is not equaled by any private company in any large city of the country which has not been forced to extraordinary economy through municipal competition.

The Seattle municipal plant has been in the exceptional position of having to win its way through competition with a private company which was already established when the public plant was launched. The Puget Sound Power and Light Company today has its distribution lines extending practically through every part of the city. Most of the consumers have the choice of taking company or city service. The municipal plant today serves about 80 per cent of the residential consumers, but less than half of the industrial users.

The striking financial results of the municipal system must be considered in the light of the competition that has existed throughout. While this has doubtless spurred the activity and efficiency of both managements, it has also imposed large double investments in distribution plant, double maintenance, and double operating expenses. If the city light department had a monopoly of the entire service, it could increase the volume of business greatly in relation to the investment and operation outlay, could effect large economies, and furnish service at even lower rates than those enjoyed by the people of Seattle.

Negotiations for the acquisition of the private system have been attempted, but an acceptable basis of purchase has not been reached.

PROSPERITY WITH COMPETITION

Incidentally, it may be mentioned, the private company has not failed to prosper against the municipal competition. It has advantages in dealing with industrial loads, including the deep antipathy of manufacturers against public ownership. From common reports it appears not always to have been overly scrupulous in its competitive efforts. It has apparently employed incessantly political power to restrain and defeat the purposes of the light department. The company has, however, prospered notwithstanding the municipal enterprise. And it has adopted mostly throughout the level of rates fixed by the city department. Hence one wonders why private companies in other cities without municipal competition, could not come to the same standards of service and rates as are enjoyed by the people of Seattle.

Perhaps the competitive pressure is necessary to produce effective economy. A private company, with monopoly, is almost certain to pile up unwarranted overheads, and will hardly keep down rates to the minimum costs necessary for adequate service. The commissions in dealing with rates elsewhere might well look to Seattle as a standard of what can be achieved if the management is devoted to efficiency of service rather than primarily to profits, direct and indirect, for the holding companies located in some distant metropolis.

In 1927, the Puget Sound Power and Light

Company was awarded the "Charles A. Coffin Medal" for "distinguished contribution to the development of electric light and power for the convenience of the public and the benefit of industry." Some of the newspapers and friends of the city department claimed that the real credit should go to the municipal plant which had pioneered in various service improvements, including particularly the introduction of electric ranges and fixing promotional schedules to make possible expensive domestic use of electricity. The fact that the company led all other private companies in progressive management indicates that perhaps much more public initiative and public consciousness would greatly stimulate the famous virtues of private initiative and rugged individualism.

OPERATING RESULTS

The crucial test of municipal operation appears in the operating results achieved under the rates charged for service. Rates, which will be discussed in some detail later, are among the lowest in the country, especially to the domestic consumers. The business organization of the light department is separate from other departments in the city. Its accounting and financial operations are distinct. It is financially self-sustaining. It must not only pay all its own operating costs, but is required to pay interest on bonds issued for plant purposes and must make provisions for bond retirement besides keeping the property in suitable operating condition.

For the year 1930, the department realized a net surplus of $1,124,549, above all operating costs, fixed charges, and special adjustments. The following is a summary of the income account for the year:

Operating revenues	$5,530,914.65
Operating expenses (including depreciation and miscellaneous operations)	3,117,096.81
Net income available for fixed charges	2,413,817.41
Interest and other fixed charges	1,026,265.09
Surplus for the year	1,387,552.75
Miscellaneous surplus adjustments-net	263,003.82
et addition to surplus	1,124,548.93

This statement includes the full financial setup for the year. It shows a net addition to surplus of nearly $1,125,000, after the payment of all operating costs, including maintenance and depreciation, and after interest and other fixed charges on the investment. It is net profit for the year above all costs properly charged against operations. It goes either to the extension of properties or the retirement of bonds which must be paid out of surplus earnings of the department.

The operating expenses include an allowance of $713,301.35 for depreciation on top of actual maintenance. This sum is set aside for the ultimate retirement of large units of property. It indicates conservative financial policy, to include all costs which ultimately must be provided for to make the properties financially self-sustaining.

The operating account includes all cost elements which would have to be provided by a private company, except taxes. As to the latter item, the department does not incur costs which are imposed upon private companies and it has, to that extent, a competitive advantage. But, suppose it had paid taxes on the usual bases. The total would probably not have exceeded 10 per cent of the gross revenues and would thus have come to $553,000. If this amount had been paid in 1930, there would still have been a surplus of $670,000. And this would still have been an imposing record compared with private companies elsewhere.

The taxes should be considered, however, in terms of other services rendered to the city and the public. If only municipal street lighting is taken into account, the average cost to Seattle is less than 2 cents per kilowatt hour. The saving to the city on this item alone has been estimated at $375,000 a year, and is practically equivalent to the taxes that would be paid otherwise by a private company.

PLANT INVESTMENT

The financial results may be considered also from the standpoint of plant investment and the financing policy of the light department.

On December 31, 1930, the cost of all the physical properties used in the public service amounted to $47,475,295. This includes all the generating plants, transmission lines and the distribution system. In addition, there were current assets, special investments and funds, which altogether brought the total up to $55,-901,004. These are gross figures, without deduction of depreciation reserve or surplus.

Against the total plant investment of $47,-475,000, there are total bonds outstanding $32,545,000. There is an excess of plant cost over bonds, amounting to $14,930,000. This is represented in part by the depreciation reserve

of $7,386,000 which has been accumulated out of past earnings and devoted to plant expansion or bond retirements. In addition, however, the plant has been built up, to a large extent, out of surplus earnings which have been devoted either directly to plant or to bond retirement. For the entire period of operation from 1905 to 1930 inclusive, the total surplus accumulated and devoted to plant purposes, amounts to $10,877,000.

A special financial feature that does not apply to private companies is the bond retirements out of earnings. While no direct charges to account are made for that purpose, the department must, nevertheless, project its financial planning so that it will have adequate funds, accumulated out of operations, to meet the various bond maturities. It cannot refund the bonds, or pay them out of construction funds. It is compelled, therefore, to build up a surplus and reserve sufficient to meet the retirements as they take place.

Up to the close of 1930, the department had issued a total of $39,339,000 bonds, had retired $6,794,000 and had still outstanding $32,545,000. But it had already set aside $1,230,000 for further redemption. The past accumulated surplus of $10,877,000 has not only taken care of all retirement provisions but has provided an excess of about $2,850,000 for other plant purposes. To the extent that plant is constructed out of surplus, subsequent bond retirements are avoided.

For the future, the problem of bond retirement is likely to be more burdensome than in the past. During recent years, large construction expenditures have been incurred in the development of the Skagit River hydroelectric project. This will require huge additional sums till final completion. Large new bond issues will be required to be retired out of earnings by the time of their maturity. This obligation is fixed by law, notwithstanding the fact that the properties must also be maintained and renewed out of earnings, and the further fact that the dams, power plant buildings, transmission lines, all the most costly units, will continue in service long after the bond retirements have been made.

Under these conditions, the department cannot furnish service merely at cost, including interest on capital, but it must collect a large enough profit to amortize the large investments that are being made in the properties for almost perpetual future service. No private company in the country faces such a financial responsibility. This certainly penalizes the municipal plant during a period of special development and subsequent amortization.

There is no sound financial reason why, to a considerable extent, refunding should not be allowed, especially when the capital expenditures are particularly large, and when they effect great operating economies and are instituted practically for permanent purposes. At least the period of amortization should be adjusted to meet the practical conditions to prevent burdensome charges against operation. After amortization is completed, the plant will stand in highly favorable condition to furnish low cost service thereafter, but during the period of amortization it is compelled to levy special profits upon the consumers to achieve the subsequent low cost status.

THE SKAGIT RIVER PROJECT

One of the remarkable hydroelectric undertakings in the country is the Skagit River development. This river system had long been recognized as the most favorable for electric development in the Northwest. It had earlier been acquired by private interests. The federal permits, however, had been allowed to lapse through failure of construction, and in 1917 the city took steps to supersede the private group. It was granted a permit on Christmas, 1918.

The department proceeded promptly with construction, and in September, 1924, placed in operation the Gorge power house. In the meanwhile, the further extension has been carried out. The total project when completed will provide an aggregate of 1,120,000 horse power and a total of 2,600,000,000 kilowatt hours a year. It will consist of three principal units. The first is the Gorge plant, which will have a total of 375,000 horse power, and has already installed and operating 75,000 horse power. It is connected with transmission lines with the city of Seattle, and is now the principal source of power for the department.

The second unit is the Diabolo plant, with a dam 189 feet high, a lake seven miles long, and a capacity 90,000 acre feet. It will have a capacity of 320,000 horse power. The dam is already completed, and the first half of the power house installation is to be finished in 1931. It is located seven miles up stream from the Gorge plant.

The third unit is the Ruby plant. It will be

located six miles further upstream from the Diabolo. It will have a total capacity of 480,000 horse power, a lake 30 miles long extending several miles into Canada, and an aggregate of 3,000,000 acre feet of storage. The dam will be 610 feet high. The surveys were started in 1931, and construction will begin immediately after the Diabolo plant is in operation.

When the entire project is completed, the bulk of the water will be used three times for generation of electricity. The total cost has been estimated at about $75,000,000, including transmission lines and step-up transformer stations. This comes to about $67 per horse power, and will furnish exceptionally cheap electricity.

THE RATES

For the consumer, the ultimate test of any power system is the charge for service. The Seattle municipal plant has always charged lower rates, especially to domestic consumers, than private companies elsewhere.

The present residential rates were put into effect in 1923. They form a simple schedule, easily understood, subject to a minimum bill of 75 cents per month. The schedule is as follows for each customer:

The first 40 kilowatt hours per month	5.5 cents
For the next 200 kilowatt hours	2.0 cents
For all above 240 kilowatt hours	1.0 cent

Much has been written and said during recent years by company officials and commissioners about promotional rates. Here is a schedule which has demonstrated its promotional effectiveness by actual results. Mostly, so far as private companies are concerned, there has been only aspirational language, with little progress to really promotional rates. The city light department first instituted such a schedule in 1915, when it fixed 2 cents per kilowatt hour for all current above 45 kilowatt hours. This was slightly increased to 2.5 cents in 1920, but was put to the present low levels in 1923 for the distinct purpose of stimulating domestic consumption. The effect of the rate policy on domestic use may be seen by the following comparative figures, which relate exclusively to residential consumers:

Year	Number consumers	Revenue from sales	Revenue per consumer	K.W.H. consumed	K.W.H. per consumer	Average revenue per K.W.H.	Number ranges	Water heaters
1915	35,170	$430,691	$12.25	7,852,554	223	5.5¢	179	....
1920	58,805	992,697	16.88	21,997,324	374	4.5	1,310	....
1925	73,481	1,421,790	19.35	39,551,297	538	3.4	7,721	....
1926	75,103	1,679,841	22.37	51,042,803	680	3.3	11,127	3,991
1927	77,863	1,942,730	24.95	64,082,748	823	3.0	14,764	5,021
1928	80,540	2,187,716	27.16	74,522,610	925	2.9	18,663	6,124
1929	82,839	2,432,682	29.37	84,250,115	1,017	2.9	21,389	7,108
1930	83,318	2,510,101	30.13	88,601,328	1,063	2.8	23,401	7,948

This table shows the development for a fifteen-year period. Considered from every standpoint, the progress made has been amazing compared with normal company accomplishments. The total revenues have increased nearly sixfold. The average revenue per customer has advanced nearly 150 per cent, notwithstanding a decrease in average revenue per kilowatt hour from 5.5 cents to 2.8 cents. The aggregate consumption increased 11.4 times.

Consider the difference between the bills to the Seattle and the New York City customers:

	Seattle	*New York*
40 kilowatt hours per month	$2.20	$2.55
100 kilowatt hours per month	3.40	5.55
240 kilowatt hours per month	6.40	12.55
500 kilowatt hours per month	8.80	25.55

The ordinary user in New York City pays 25 cents per month more than the corresponding user in Seattle. But, for the larger consumption, the difference in bills becomes glaring.

To a large extent the accomplishments of the Seattle municipal light plant are the achievements of Superintendent J. D. Ross.

MUNICIPAL ACTIVITIES ABROAD

EDITED BY ROWLAND A. EGGER · *Virginia Bureau of Public Administration*

The Training of Belgian Local Officials.—The International Congress of Local Authorities has considered previously on several different occasions the question of the retirement and training of local government officers. The question was discussed in the Brussels congresses of 1910 and 1923 and again recurred at Madrid only last year.[1] The London congress of 1932 is scheduled again to consider the general problem of local government personnel.

M. Max Fauconnier has prepared the report on the local government employees of Belgium.[2] The kingdom has an area of 11,752 square miles and a population of approximately eight millions. This area is subdivided for governmental purposes into 2,638 communes whose populations are as follows:

Population	*Number of Communes*
100,000 and over	5
25,000 to 100,000	26
5,000 to 25,000	246
2,000 to 5,000	497
Less than 2,000	1,864
	2,638

While the communes are theoretically supposed to be vested with a certain autonomous jurisdiction within which they are self-determining, this independence is in reality very nominal, due to the extensive and complicated system of provisional orders and of local acts which require the confirmation of provincial and state governments. Generally speaking, however, except for certain very broad legal requirements, the designation and regulation of municipal employees and functionaries is left entirely to the local council. It is hence somewhat difficult, due to the great variation in municipal personnel methods and municipal functions as well as to the great variation of the area and population of the communes themselves, to generalize about communal personnel technique.

The powers of Belgian communes are numerous and of various sorts. Fundamentally their major functions relate to general welfare, the civil service, the police, the militia, public instruction and highways. In the exercise of all of these functions and powers the local governments operate, however, under numerous restrictory laws relating to such matters as finance, public assistance, social works, infant welfare, old age pensions, unemployment, etc., as well as statutes regulating electoral affairs and diverse industrial, agricultural and transportation orders and decrees.

It is apparent that for the proper performance of these functions people with various sorts of training must be drawn into the communal personnel. Too, the problem of the small commune indicates the necessity for an official broadly trained and qualified in the elementary functions which such governmental units perform. While it is true that in the small communes the regular intervention of the commissioner of *arrondissement* serves as a check upon inadequately trained local personnel, it is equally true that the functions of the commissioner are only supervisory and not supplementary. Generally speaking, the secretary of the commune

[1] For a translation of the "Conclusions" of the Madrid Congress in 1930, see this REVIEW, Vol. 20, p. 547 (Sept., 1931).

[2] Summarized from *L'Administration Locale*, September, 1931.

has come to occupy a position somewhat analogous to that of the English town clerk, and in the smaller communes is frequently the only official of any administrative importance.

RECRUITMENT

Conformably to Articles 78 and 84 of the Municipal Law of March 30, 1836, the nomination of municipal employees is a function of the council, although this function may be delegated to the burgomaster and his assistants in their collegial capacity. Likewise the suspension of municipal employees and the revocation of their appointments is a function of the council, but must receive the approval of the permanent deputation with final recourse to the Crown. The same approbation is required for the nomination, the suspension, or the discharge of at least two communal officials (as distinct from employees), the secretary of the commune, and the communal receiver, who is the principle local fiscal officer. A law of July 30, 1903, granted further to local employees stability of tenure, and a later law of 1909 extended these grants to the non-governmental local workers.

It is thus possible to say that in Belgium the commune exercises complete freedom in determining the conditions of recruitment and advancement of local employees. In the smaller communes of course the problem of employing a secretary and one or two assistants presents no difficulty. It is in fact the general practice to designate local educators or prelates to this post. In the larger cities the multiplication of administrative posts to be filled together with the additional technical qualifications which the functional complexity of the large city demands create an acute problem in the technique of personnel recruitment.

Partially to set up preliminary eliminating standards the practice generally is to require the submission of a certificate of elementary studies as well as a diploma of intermediate studies (*degré inférieur*, which is received after three or four years of study in an intermediate school) or a certificate of intermediate studies (*dégre supérieur*, which is granted after six or seven years study in a lycée or college). More generally, however, the candidates are given, after application for particular posts advertised as vacant, examinations covering the specific studies which they certify, augmented by interrogation on constitutional law, as well as the provincial and communal statutes of Belgium.

The normal age of admission is generally fixed at around the twentieth year, after the completion of the period of compulsory military service. A maximum age limit for entrance is not infrequently fixed at between twenty-five and thirty years or slightly higher.[1] The placement of employees thus inducted into the service is admittedly wholly without method and involves a high degree of hazard in locating civil servants in a manner best suited to their individual aptitudes and likings.

ADVANCEMENT

The municipal employee is usually admitted to the service after a provisional nomination. Two or more years of satisfactory service generally are necessary to make this appointment final. According to M. Fauconnier if the novitiate is so fortunate as to be properly placed and if he displays ability and adaptability, his promotion may be as rapid as his immediate superiors will permit. This advancement usually consists of a gradual and orderly passage by a series of hierarchic grades. This is to say that the employee goes from a third class secretaryship or clerkship to the second and then to the first classes and thence to the directorate of a service, then to under secretary and secretary for a bureau, to chief of a division and from there perhaps to a secretaryship of a commune or an analogous administrative post. This mode of progression is, of course, subject to many variations and exceptions as between communes and as between services within the commune.

M. Fauconnier notes that there are two fundamental principles governing advancement, and that these operate either alone or conjointly. The first is seniority and the second is discrimination. M. Fauconnier does not discuss the relative merits of seniority promotion or promotion on the approval of the superior officer other than indicating that both have substantial points in their favor, but that promotion on bases other than seniority require for proper operation a methodology which has not yet been developed in Belgium. He points out that there are numerous conditions and formalities operating to make any system of merit advancement difficult. For example, in numerous cases the nomination for a post superior to that in which he is then

[1] Under the terms of a law of August 3, 1919, however, an ex-soldier may demand a waiver of this requirement up to an excess age of five years.

serving, and particularly in cases which involve a change in the grade of his commission, such as from a service secretaryship to an under secretary or a chief of bureau, is not accorded to candidates until after they have served at least ten years in the grade immediately inferior. This in itself virtually enforces a system of seniority promotion. He believes, furthermore, that the various guarantees adopted by municipalities for their employees in service tend to discourage potential future candidates. It is interesting to note that for advancement purposes the certifications of studies, particularly in administrative law, are generally supplemented by special examinations and that not infrequently posts are filled and eligibility is determined, if other things are equal, by the showing of the candidate in his examinations. In recent years the tendency of these special examinations has been in the direction of a more general testing of the candidate's knowledge and background rather than his acquaintance with the details of the law requisite to the satisfactory day-to-day performance of his immediate task, although here as elsewhere generalizations are somewhat perilous. The special difficulties which alterations in advancement policy encounter from the employees is discussed in some detail. It would be virtually impossible, in the opinion of the *rapporteur*, to change overnight from a policy of advancement based wholly or primarily upon seniority to advancement contingent upon examination, etc. He believes, however, that over a considerable period of time it would be possible definitely to alter the present promotion policy and gradually to install a system of promotion entirely contingent upon ability, service records, and examination for additional technical qualifications.

APPRENTICESHIP AND PROFESSIONAL TRAINING

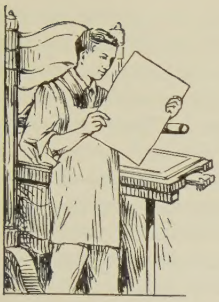
The *rapporteur* is particularly incisive in his criticisms of methods for so-called "improvement-in-service" in the Belgian local administration. While there is definitely a tradition of apprenticeship, again analogous to the English local government service, he considers the training which apprenticeship gives wholly unsatisfactory except in the relatively small commune. The reasons for this are somewhat obvious. In the smaller commune the apprentice carries on his work constantly under the supervision of the communal secretary. This enables him to secure a view of the local administration in its entirety —to recognize the interrelationship of the entirety of the functional services. In the larger commune, says M. Fauconnier, these favorable conditions do not prevail. The candidate is assigned immediately to a highly specialized service, his attention is directed to a very limited number of objects, and the unity of the ensemble of the city's work is made impossible of realization by the beginning employee.

Because of the entirely haphazard methods of placement which have been noted above, the training in the larger communes, because it does not offer a period of general experience upon the basis of which a satisfactory selection of the special field might be made, is responsible for many separations from the service, and for not a few definite maladjustments even when connection with the local government service is maintained. At the same time economic considerations probably do not justify the extension of a sort of general apprenticeship to the various classes of minor employees.

While the *rapporteur* is not too definite in his solution of these difficulties he argues brilliantly for requiring a broader acquaintance with the theory and practice of public administration in all levels of the local personnel. He suggests also frequent conferences of employees, as well as the institution of special administrative courses for local employees.

This latter suggestion is in accord with developments in Belgium at the present time. Seven provinces now offer instruction of this sort under one designation or another. Hainaut was the first, having instituted instruction in administrative sciences and law as early as 1914, and its example has been followed by the provinces of Antwerp, Brabant, Eastern Flanders, Western Flanders, Liége, and Namur.

These courses in administration are organized on a very elaborate and somewhat complicated scale. They are under the direction usually of one of the under-secretaries of the province and are decentralized under the chiefs of *arrondissement* accordingly as the number of employees desiring to participate in them justifies this measure. The professors are generally communal functionaries—practicing specialists.



NOTES AND EVENTS

Bi-partisan Judiciary Deal in Brooklyn.—Recent scandals affecting the minor judiciaries in New York City have stimulated interest in the problems relating to the selection of judges and the responsibility of the bar associations concerning these selections. To this has now been added a chapter on the workings of the bi-party system in the election of judges.

For several years the bar associations of Brooklyn and the rest of Long Island and Staten Island, which constitute the second judiciary department in New York, had been clamoring for more judges for the Supreme Court—the court of first instance—in their department. It could not be denied that calendars were badly congested, though some dared to point out that if judges sat more regularly, arrived in court more promptly, conducted judiciary business more efficiently, and took less generous vacations, this congestion would disappear—none the less, there was a substantial general demand for several new judges.

The Republicans controlled the state legislature, but were dominant in only two of the five counties involved. On a general ticket it was clear that the Democrats could have elected their entire state.

The Republicans were unwilling to authorize any new judgeships unless they were assured of one or two places for their party. Unable to agree upon a proper division of four places, party leaders thought they might solve their difficulties by creating six, but the difficulties persisted, and the number was increased to ten. At length they compromised upon twelve, of whom the Republicans were to name four.

That a deal had been reached no one could or did doubt when the bill was finally passed. Even Governor Roosevelt, in signing the bill, alluded to the rumors concerning a deal, and remarked that that was a phase for the electors to deal with.

Thus the matter rested from the signing of the bill until the eve of the judiciary convention in September. Then was spread that Boss McCooey, of Brooklyn, had in mind to pick for one of the Democratic places his 31-year-old son, who had never held public office and could hardly be said to have distinguished himself at the bar.

So preposterous was this suggestion that few were disposed to take it seriously. The Boss kept his own counsel, and the names he had selected were not announced until a few minutes before they were offered to the convention. The Democratic convention, which met first, took the slate which McCooey gave it, including the name of his son, and four Republicans. The Republican convention, meeting the next day, placed the same names in nomination. A storm of public protest gathered at once. Four of the persons who had assisted the legislation in its passage through the legislature were named as beneficiaries under it. These included the former Republican leader of Brooklyn, the county chairman of Kings County, the Republican leader of Suffolk County, and Boss McCooey in in the person of his son.

Indignant opponents of this arrogant action sought to put an independent ticket in the field. They were able finally to muster four lawyers, satisfactory in competence and experience, but hardly to be called outstanding. They were offered as the "square deal" ticket. The committee on courts of the Brooklyn Bar Association condemned the deal which the Republican and Democratic leaders had made, and refused particularly to approve the candidacy of the youthful McCooey. The membership of the body, however, not only repudiated its commit-

tee, but actually adopted resolutions extolling McCooey's fitness. Such is his father's power.

The "square deal" candidates fought gamely in the up-hill contest, unquestionably handicapped by the universal conviction that they hadn't a chance. The public was more than a little confused as to the reason why indignation was expected of it, because of emphasis placed in the past upon bi-partisan endorsement of sitting judges, and because such inter-party deals are far from uncommon.

The independent nominees received less than 100,000 votes in a total of 788,475 cast. The only other noteworthy circumstance in connection with the balloting was the fact that McCooey's boy, though placed at the very head of the ballot, ran poorest. One may wonder if a governor, however partisan, would have dared to take the responsibility for appointing so obviously political a group of judges to the bench.

JOSEPH D. MCGOLDRICK.

New York Cities Organize Purchasing Service.—When a city or first-class village in New York state now purchases a quantity of supplies, the purchasing official of every other city and village knows within a month the quantity and quality purchased and the unit price paid. This new municipal purchasing service, the first of its kind ever attempted by municipalities, is being carried on under the direction of the New York State Conference of Mayors and Other Municipal Officials. The details of the new service were formulated by a committee of municipal purchasing officials consisting of Norman C. Sprickman, Buffalo; August Smingler, Syracuse; Wendell E. Andrews, Rochester; Harold Evans, Watertown.

In this service, inaugurated on December 1, the Mayors' Conference is sending to the purchasing official of each city and first-class village a blank form on which is listed about one hundred supplies and materials which all municipalities ordinarily purchase in the course of a year. The official reports on this form the quality and quantity of all the listed articles which his municipality purchased during the previous month, and the unit prices paid. He returns the report to the Conference not later than the tenth of each month. All data received are compiled and a confidential report mailed to each purchasing official not later than the fifteenth of each month.

In its announcement to the municipalities of the new service, the Mayors' Conference said, "Owing to the difficulty of reporting the exact quality of the products purchased or the detailed specifications under which the purchases were made, the unit prices paid will not indicate the purchasing efficiency of the municipalities. There are also other factors, such as accessibility, condition of market, freight rates, etc., which cannot be indicated, but which greatly influence unit prices. The information, however, will be of great value to every purchasing official.

"The reports will keep each city and village informed every month of the municipal purchases of all the other municipalities. With this information each purchasing official can check his work, possibly learn where he can obtain better prices or markets and prevent being imposed upon. This service should eventually make all of the cities and first class villages in effect a single purchasing unit with its resulting benefits."

ALBERT H. HALL.

Cincinnati's New Waste Collection and Disposal System Saves $100,000 per year.—In 1931 Cincinnati inaugurated a new waste collection and disposal system, having several outstanding features of general interest. Under the new plan the city will collect and dispose of all household refuse including garbage. Previously the latter service had been handled by a private concern under contract. Improved service features include front house line collection instead of curb service, the elimination of many dumps and dump fires, and a less offensive and more sanitary method of collection and disposal with no increase in cost.

Three incinerators for the disposal of combustible wastes have been constructed, having a combined capacity of five hundred tons per twenty-four hours. The plants are so located as to minimize the cost of collection transportation which constitutes the greater proportion of a city's total expenditures for this service. District garages for storing and repairing equipment adjoin the incinerators. A system of dispatching equipment is being evolved which will provide the most economical and efficient collection service possible.

Despite its added service features, the operating cost of the new plan is essentially the same as under the previous system. It is an accepted fact that a renewal of the contract for garbage collection and disposal would have cost the city at least $100,000 more than the present operating costs.

It was necessary to provide additional motor transportation facilities when the city assumed this new responsibility. A survey made of the peculiar collection problems existing in Cincinnati revealed the desirability of particular types of equipment to meet the various problems presented by the topography and general physical characteristics of the city. For instance, trailer trains were designated as the most effective transportation medium in congested districts of level topography. These trains are limited by law to two tractors each and are hauled, in most cases, by a small tractor mounted on pneumatic tires.

In other localities semi-trailers, designed according to the city's suggestions, have been used with great success. The body of this unit is similar in design to the trailer equipment. Each body has a water level capacity of nine cubic yards and a loading height of five feet ten inches. It is of the side dump type and attached to the power unit by a fifth wheel attachment. The complete unit is mounted on pneumatic tires and equipped with air brakes. Each semi-trailer can draw an additional trailer which is attached by a "pintle hook."

The third type of equipment purchased was a truck with special body constructed according to our specifications. The body has an eight-cubic-yard water level capacity and a loading height of five feet ten inches. Trucks are essential on the hills of the city, especially during the winter months.

The transition from the old scheme of collection to the new was effected with very little trouble despite the fact that it occurred at a peak load period.

❋

Pittsburgh Indicts Treasury Officials.—Two responsible officials of the treasurer's office of the city of Pittsburgh have been indicted for embezzlement of city funds and others may follow (December 10). It is reported that a shortage of some $75,000 has been discovered by the controller's auditors, who have been at work several weeks on the treasury books. Early in their investigation, City Treasurer Schooley was suspended and later dismissed by Mayor Kline. This is the second time since February, 1931, that the dismissal of a department head has been forced by the discovery of irregularities in his department. As in the department of supplies, and to some extent in the department of public works, loose administrative practices have allowed the unprincipled to profit and have made it difficult for the conscientious and the competent to perform meritorious public service. The fact of more than passing significance is that the departments of supplies and of public works have already effected important changes in administrative methods, and that the treasurer's department is soon to follow.

ELBERT EIBLING.

❋

Disputed Voting Machines Approved in Pennsylvania.—After several tests and retests the new Poole voting machine has been finally certified by the secretary of commonwealth of Pennsylvania, not, however, without recommending alterations in the machine. A taxpayer's suit to prevent the final payment of $410,000 on the 1,100 machines purchased for use in Allegheny County was withdrawn after the manufacturer agreed to post adequate bond that the several changes recommended by the state would be made.

ELBERT EIBLING.

❋

Michigan Begins Survey of Local Government.—The Michigan State Commission of Inquiry into County, Township and School District Government has arranged with Lent D. Upson, director of the Detroit Bureau of Governmental Research, to be in charge of this study. The report must be submitted to the state legislature at its session beginning in January, 1933.

The University of Michigan and Michigan State College are joining with the Detroit Bureau of Governmental Research in supplementing the appropriation for the survey made by the state government.

Professors Thomas H. Reed, E. R. Sunderland and John Sundwall of the University of Michigan, and Professors P. A. Herbert and F. M. Thrun, of Michigan State College, are serving as an advisory committee to the director.

❋

Administrative Code Approved by Maine Voters.—On November 9 the voters of Maine accepted the Administrative Code Act at a special referendum election. Though the total votes cast numbered about one-fourth as many as in general elections, the majority in favor of the code was substantially larger than had been generally expected. The governor will soon appoint heads for three new departments, and the reorganization of five departments will take effect early in 1932. While the present governor,

William Tudor Gardiner, will serve for another year, he naturally hopes his successor will be favorable to the new plan.

E. F. Dow.

❄

Cleveland Voters Veto Municipal Light Bonds. —A reversal of public opinion toward the Cleveland Municipal Light Plant was recorded at the November election, when the electorate rejected a bond issue of $2,500,000 for the expansion of the plant. Out of a total vote in the city of 164,516, the vote on the bonds was 135,543 while the vote on the charter which abolished the city manager plan in favor of the elected mayor was only 113,379.

Over a long period of years previous bond issues for the plant have passed without exception, receiving in each instance 60 per cent or more of the total votes cast. The vote this time was 73,128 for and 62,415 against the bonds or about 8,000 votes short of the required 60 per cent majority.

The change in sentiment toward municipal ownership and operation of electric utility service in Cleveland is due primarily, first to a better understanding by the voters of the politics and economics of this municipal utility venture; second to the fact that the plant serves only a small minority of homes and has not provided any such thing as three-cent domestic light in Cleveland since 1921 and, finally, the fact that the plant has failed as a rate regulator of the private company which is not only well managed but also has the confidence of the public and serves five-sixths of the light and power consumers of the city at lower average unit rates.

Since 1919, at least, the Cleveland Electric Illuminating Company has served as a rate regulator for its municipal competitor. The company has made a half a dozen voluntary rate reductions which brought its charges to various classes of consumers below the municipal rates. In every such instance the municipality was forced to reduce its rates to hold its business.

The private company has taken the initiative in rate reductions despite the fact that it pays twelve cents out of every dollar of revenue into the public treasury as taxes, while the municipal plant is tax-exempt. The sixteen-year record of the municipal plant shows that it could not have continued in business if it had been obliged to pay taxes. And the public now knows that some one has to pay these taxes.

The bond issue aroused added opposition because it carried with it a tax levy for 15 years, as required by law, to pay the principal and interest on the bonds. Proponents of the bond issue claimed that these charges would be paid out of earnings, but it appeared that the present plant is not overloaded, and there is little prospect that it will be in the near future. The voters did not seem to believe that light plant expansion would be self-supporting.

The *Cleveland Plain Dealer* and the *Press* warmly approved the issue while it was opposed by the *News*, the Chamber of Commerce, the Building Owners and Managers Association, the Apartment Owners Association, the Association for Retrenchment of Public Expenditures and taxpayers generally. The president of the private company also sent a communication to his own customers calling attention to competition by a tax-free municipal plant as unfair not only to the company but to its customers and all taxpayers.

Howell Wright.